

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-2086

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ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

GEORGE FELDMAN, Trustee in Bankruptcy of LEASING  
CONSULTANTS INCORPORATED, Bankrupt.

*Plaintiff-Appellant.*

- against -

NATIONAL BANK OF NORTH AMERICA,

*Defendant-Appellee.*

---

JOINT APPENDIX

---

HAHN, HESSEN, MARGOLIS & RYAN

*Attorneys for Plaintiff-Appellant*

350 Fifth Avenue

New York, New York 10001

(212) 736-1000

COLE & DEITZ

*Attorneys for Defendant-Appellee*

40 Wall Street

New York, New York 10005

269-2500



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# JAI WEINSTEIN

D. C.

740 175 DOCKET

**ATTORNEYS**

For Plaintiff **HAIN, HESSEN,**

350 Fifth Avenue

New York, N.Y. 10001

735-1000

**For Defendant:**

Cole & Deitz

40 Wall Street

NY, NY 10005 269-2501

Seeks: \$601,035.94

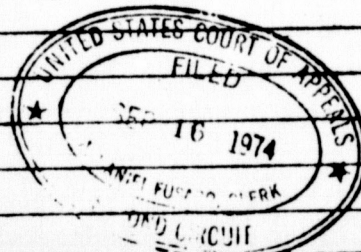
**ON**

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## RECEIPTS, REMARKS, ETC.

AMOUNT

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## Docket Entries

1A2

4C 175

FELDMAN etc. - vs. - NATIONAL BANK OF NORTH CAROLINA

| DATE    | FILINGS—PROCEEDINGS   | AMOUNT REPORTED IN<br>VOLUME<br>PAGE |
|---------|---|--------------------------------------|
| 1-31-74 | Complaint filed Summons issued.   | 1                                    |
| 2-26-74 | Summons returned and filed/executed.  | 2                                    |
| 3-22-74 | Notice of motion and memorandum of law to dismiss complaint<br>ret 4-22-74 at 9:30 A.M. filed.  | 3/4                                  |
| 4/17/74 | Pltff's notice of cross motion ret 4-22-74 for summary<br>judgment, etc. filed. 1 memo of law in support filed.   | 5/6                                  |
| 4/19/74 | By WEINSTEIN, J. - Order dated 4/18/74 filed that the deft's<br>motion for summary judgment is hereby adjd to 5/17/74   | 7                                    |
| 5/22/74 | Before WEINSTEIN, J. - Case called- Adjd to 5/17/74   |                                      |
| 5/14/74 | By WEINSTEIN, J. - Order dated 5/13/74 filed that the motion<br>for summary judgment is adjd to 6/14/74   | 8                                    |
| 6-5-74  | Deft's response to pltff's rule 9(g) statement filed.   | 9                                    |
| 6-5-74  | Deft's memorandum in opposition to pltff's motion and in reply<br>to his opposing memorandum filed.   | 10                                   |
| 6-12-74 | By WEINSTEIN, J. - Order dtd. 6-11-74 adjding motion for<br>dismissal to 6-28-74 filed.   | 11                                   |
| 6/28/74 | Before WEINSTEIN, J. - Case called- Deft's motion for summary<br>judgment-Hearing ordered and begun-Hearing concluded-Defts<br>motion for summary judgment is granted- Findings of fact<br>read into record- Submit order on 1 weeks notice |                                      |
| 7/2/74  | Stenographer's transcript of 6/28/74 filed.   | 12                                   |
| 7/3/74  | Letter dated D. Zimmerman to J. Weinstein filed.  | 13                                   |
| 7/3/74  | Motion for reargument filed.  | 14                                   |
| 7-10-74 | By WEINSTEIN, J. - Order dtd 7-8-74 denying pltff's cross-motion<br>for summary judgment, and granting deft's motion for summary<br>judgment dismissing complaint, etc. filed.  | 15                                   |
| 7-10-74 | Letter from Cole & Deitz dtd 7-8-74 filed.  | 16                                   |
| 7-10-74 | By WEINSTEIN, J. - Order dtd 7-8-74 denying motion for re-<br>argument, etc. filed on document #16. (p/c mailed to attys)   | 17                                   |
| 7-11-74 | Notice of entry of judgment & order filed.  | 17                                   |
| 7-18-74 | Notice of motion for a hearing ret. 7-26-74 @ 10:30 A.M. filed  | 18                                   |
| 7-26-74 | Before WEINSTEIN, J. - Case called for hearing on pltff's motion<br>to stay enforcement of judgment. Motion argued & granted on<br>condition that the certificate of deposit be turned over, etc.   |                                      |
| 8/7/74  | Notice of appeal filed (Copies mailed to advr & C of A)   | 19                                   |
| 9-13-74 | Pltff's reply memorandum filed.   | 20                                   |
| 1-13-74 | Above record certified & mailed to C of A.  | --                                   |

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
GEORGE FELDMAN, As Trustee in  
Bankruptcy of LEASING CONSULTANTS  
INCORPORATED, Bankrupt,

74 Civ.

Plaintiff,

- against -

NATIONAL BANK OF NORTH AMERICA,

Defendant.  
-----x

COMPLAINT

1. Plaintiff is the duly qualified and acting trustee in bankruptcy of Leasing Consultants Incorporated ("Leasing"), a New York corporation which filed a petition for arrangement pursuant to Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York on August 18, 1970, and was thereafter adjudicated a bankrupt by order dated October 16, 1970.

2. Defendant National Bank of North America ("NBNA") is a national banking association formed under the laws of the United States with its principal offices in the State of New York, County of Queens.

3. Jurisdiction is predicated upon 28 U.S.C. section 1331 and 11 U.S.C. section 110e. The action arises under the Federal Aviation Act of 1958, 49 U.S.C. section 1301 et seq., as hereinafter more fully appears and the matter in controversy exceeds the sum of ten thousand dollars exclusive of costs and interest.

FIRST CAUSE OF ACTION

4. On or about April 11, 1969 Leasing as lessor and Grant Company ("Grant") as lessee executed an "Aircraft Lease" covering a 1965 North American Sabre Liner, model 265-40, registration number N299LR. A copy of said lease is annexed hereto marked exhibit "A" and made a part hereof.

5. Leasing had purchased this aircraft from Jack Adams Aircraft Sales, Inc. for the sum of \$825,000.00.

6. Under said lease, Grant was required to make ninety-six monthly payments of \$11,593.75 each, aggregating \$1,113,000.00 in total.

7. Leasing gave Grant a written option to purchase the aircraft at the conclusion of the lease term, for the sum of \$79,500.00. A copy of the purchase option agreement is annexed as part of exhibit "A" hereto.

8. On or about March 13, 1970, Leasing assigned the Grant aircraft lease to NBNA as security for Leasing's indebtedness to NBNA. A copy of said assignment is annexed hereto, marked exhibit "B" and made a part hereof.

9. Said assignment was not filed for recordation with the Administrator of the Federal Aviation Administration as required by the Federal Aviation Act of 1958 and the Regulations promulgated thereunder.

10. NBNA failed to perfect its security interest in said aircraft lease and the payments to be made by Grant thereunder.

11. Upon information and belief subsequent to the date of bankruptcy NBNA received monthly payments in the sum of \$11,593.75 per month from Grant pursuant to the terms of the aforesaid aircraft lease and assignment and has been applying them to the payment of accrued interest and the reduction of principal on Leasing's loan indebtedness to NBNA.

12. Upon information and belief, subsequent to August 18, 1970, NBNA collected thirty-eight (38) payments of \$11,593.75 each or a total of \$440,562.50.

13. NBNA's interest in the payments made under the Grant aircraft lease is invalid against plaintiff.

#### SECOND CAUSE OF ACTION

14. On or about November 12, 1973, plaintiff and NBNA entered into a stipulation, incorporated herein by reference, wherein and whereunder, they jointly stipulated and agreed to join to give Grant clear title to the leased aircraft in exchange for a substantial cash payment. A portion of this cash payment, totalling \$160,473.44 and representing the principal balance and accrued

interest due to NBNA on its loan to Leasing, was placed in an interest bearing account under plaintiff's control, with its ultimate disposition subject to court order or further stipulation of the parties. The stipulation and the sale of the aircraft to Grant was without prejudice to the parties' respective rights.

15. NBNA's interest in said fund, and the interest accruing thereon, is invalid against plaintiff, and plaintiff is entitled to the fund and the interest accruing thereon.

WHEREFORE, plaintiff demands judgment against defendant National Bank of North America in the sum of \$440,562.50 plus interest on the component parts thereof; and a judgment declaring the interest of National Bank of North America in the fund of \$160,473.44 plus accrued interest, invalid as to plaintiff; together with the costs of this proceeding.

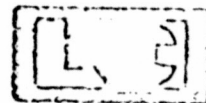
HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff

By: \_\_\_\_\_  
For the Firm

350 Fifth Avenue  
New York, New York 10001  
Telephone Number: (212) 736-1000

EXHIBITS ANNEXED TO FOREGOING COMPLAINT





212-275-1500

LEASE NO: 1242

WITNESSETH:

It is the intent of the parties to effectuate the terms of this lease liability insurance in a minimum amount of \$100,000. It is not the intent of the parties to effectuate the terms of this lease liability insurance in a minimum amount of \$100,000. It is not the intent of the parties to effectuate the terms of this lease liability insurance in a minimum amount of \$100,000.

Duplicate copies of all insurance policies or certificates evidencing such insurance shall be furnished to Lessor.

(c) In the event of loss or damage to the aircraft, Lessee shall immediately report said loss or damage to the Lessor, the insurance company, to any party having a security interest in the aircraft and to the interest of federal and state governmental agencies, and shall furnish such information and execute such documents as may be required to collect the proceeds of any insurance policy or policies. In the event of loss or damage to the leased aircraft, the right, title and interest of the parties hereto shall be as follows: If the aircraft is lost or damaged is not covered by said insurance because of any action or omission on the part of Lessee, or his agents, servants or employees, Lessee agrees to pay to Lessor and to any party having a security interest in the aircraft, as their interests may appear, the balance due under this lease, and the contract shall be terminated. If the aircraft is only partially damaged, then this lease shall remain in full force and effect, and Lessee shall, at its own cost and expense, fully repair the aircraft so as to place it as near as possible in the same condition that it was before said damage. To the extent that such damage is covered by said insurance policy or policies, Lessor, upon receiving from Lessee such information and such documents as may be required, shall collect the proceeds from any insurance policy or policies, and shall promptly reimburse Lessee for its costs of repairing said aircraft to as full extent of, but not more than, the net amount of such insurance recovery, provided, however, that no such payment shall be made to Lessee until the repairs have been approved by the Lessor, or its agent, and the aircraft placed as near as possible in the same condition that it was before said damage.

11. Lessee shall comply with and conform to all laws and regulations relating to the ownership, possession, use or maintenance of the aircraft and shall Lessor harmless against actual or asserted violations, and pay all costs and expenses of every character occasioned by or arising out of such use, and pay promptly when due all taxes and other public charges against or upon the aircraft, (local, State and Federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the aircraft, including search and registration fees incurred by Lessor, together with any and all license and permit fees for operation of the said aircraft. Any certificates, licenses and permits issued with reference to such aircraft shall indicate that title and ownership is vested in the Lessor and shall also indicate the name of any party holding a security interest in said aircraft. Lessee agrees to reimburse Lessor upon demand for any fees or taxes paid by Lessor, including initial title research fee of \$25.00 for aircraft having single or multi-power plants or less than 750 horsepower each; and for aircraft or single or multi power plants of greater than 750 horsepower, or \$25.00 plus \$15.00 per engine.

12. This is an agreement of lease only and nothing herein shall be construed as conveying to Lessee any right, title or interest in or to the aircraft leased hereunder, except as a lessee only. Title to the aircraft shall at all times remain in Lessor. Lessee shall at all times protect and defend, at its own cost and expense, the title of Lessor from and against all claims, liens and legal processes of creditors of Lessee and shall keep all of the aircraft free and clear of such claims, liens and processes.

13. This lease and all rights of Lessor hereunder shall be assignable by Lessor without the consent of Lessee and without prior notice to the Lessee but Lessee shall not be under any obligation to any assignee of Lessor except after written notice of such assignment from Lessor. Without the prior written consent of Lessor, Lessee shall not assign this lease or its interest hereunder or enter into any sublease with respect to the aircraft covered thereby. Any assignment of Lessor shall be entitled to all rights and remedies herein conferred on Lessor, but Lessor will not thereby become such assignee's agent. Lessee will settle all claims against Lessor directly with Lessor. Lessor hereby agreeing to remain responsible therefor, and Lessee will not set up any claim or defense against any assignee of Lessor. Without limiting the generality of the foregoing, he Lessee agrees that the Lessor may assign all right, title and interest to Lessor in and to all monies due and to become due to Lessor hereunder to a financing institution (hereinafter called Assignee), consents to any such assignment and, in the event of such assignment, Lessee agrees with the Lessor as follows:

(a) That its obligation to pay directly to the Assignee the amounts (whether designated as rentals or otherwise) which become due from the Lessee hereunder shall be absolutely unconditional and those amounts (or, on failure to pay those amounts, monies equal to those amounts) shall be payable to the Assignee by the Lessee whether or not this lease is terminated by operation of law or otherwise, and the Lessee promises so to pay the same notwithstanding any defense, set-off or counterclaim whatsoever whether by reason of breach of the lease or otherwise which it may or might now or hereafter have as against the Lessor (the Lessee reserving its right to have recourse directly against the Lessor on account of any such defense, set-off or counterclaim); and

(b) That subject to and without impairment of the Lessee's leasehold rights in and to the leased Equipment, Lessee holds said aircraft and the possession thereof for the Assignee to the extent of the Assignee's rights therein.

14. Lessor covenants to and with Lessee that—except as herein provided, Lessor is the owner of the aircraft free from all encumbrances and that conditioned upon Lessee's performing the conditions hereof, Lessee shall peaceably and quietly hold, possess and use the aircraft during said term without let or hindrance.

15. There shall be deemed to be a breach of this lease (a) if Lessee shall default in the payment of any rent hereunder when due, (b) if Lessee shall default in the performance of any of the other covenants herein and such default shall continue uncured for five (5) days after written notice thereof to Lessee by Lessor or (c) if Lessee become insolvent, or if a petition in bankruptcy is filed by or against Lessee pursuant to any statute either of the United States or of any State (including a petition for reorganization, arrangement or an extension for the appointment of a receiver or a trustee or all or a portion of Lessee's property), or if Lessee makes an assignment for the benefit of creditors, or if Lessee attempts to remove, sell, transfer encumber, sublet or part with possession of the Equipment, or any part thereof, in the event of a breach of this lease as herein defined, Lessor may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants and terms of this lease or to recover damages for the breach of such covenants and terms hereof; or

(b) By notice in writing to the Lessee terminate this lease, as to all or any of the items of aircraft leased hereunder, whereupon all right, title and interest of Lessee to or in the use of said items of aircraft shall absolutely cease and determine as though this lease had never been made; and thereupon Lessor may, directly or by its agents, enter upon the premises of Lessor or other premises where any of the said aircraft may be or supposed to be and take possession thereof and thenceforth hold, possess and enjoy the same free from any right of Lessee or its successors or assigns, including any receiver, trustee in bankruptcy or creditor of Lessee, to hold or use said aircraft for any purposes whatever; but Lessor shall nevertheless have a right to recover from Lessee any and all amounts including rents, which, under the terms of this lease may be then due and be unpaid hereunder for use of said aircraft together with any damages in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this lease, together with attorneys' fees, as hereinafter provided, and such expenses as shall be expended or incurred in the seizure of aircraft or in the enforcement of any right or privilege hereunder or in any consultation or action in such connection. Lessor may sell the aircraft with notice, or without notice where permitted by law, at private or public sale, without having the aircraft at the sale, and the proceeds thereof less expenses of retaking, repairing, reselling and reasonable attorney's fees will be credited upon unpaid rents; any surplus shall be paid to such persons, if any, who are entitled by law to receive such surplus from Lessor prior to Lessee, and any unpaid residue thereof to Lessee and any deficiency obligations under this lease in accordance with the provisions of law relating thereto in the event that Lessor shall upon default of Lessee refer said default to attorneys for commencement of legal action, there shall accrue and become owing to Lessor in addition to all other sums owing hereunder, an amount equal to twenty (20%) percent of such sums as legal fees and expenses. No remedy of Lessor hereunder shall be exclusive of any other remedy herein or by law provided, but Lessor's remedies shall be cumulative. Failure on the part of Lessor to exercise any remedy shall not be deemed a waiver thereof, or of any default. Waiver of any default by Lessor shall not be deemed a waiver of any other or a subsequent default.

16. This lease shall automatically be renewed each year for a term of one year at the renewal specified in the schedule upon all the terms and conditions hereof unless Lessee gives to Lessor written notice of cancellation not less than thirty (30) days prior to the expiration of the preceding term.

17. All notices relating hereto shall be delivered in person to an officer of Lessor or Lessee or shall be mailed by registered mail to Lessor or Lessee at their respective addresses shown above or at such other address furnished in writing to the sender by the other party.

18. This lease is entered into and is to be construed in accordance with the laws of the State of New York and shall become effective only when same shall have been countersigned by an officer of the Lessor at its home office in New York.

19. Lessor has not made any representations of any kind, nature or description except as are in this lease specifically set forth and this lease contains all the terms and agreements entered into between the parties, and no representation, agreement, guaranty, warranty, waiver or change in this lease, not included herein shall bind any assignee unless in writing signed by the assignee.

20. Lessee will at request of Lessor execute any ancillary documents which Lessor may deem necessary to effect the purpose and intent of this agreement, including financing statements pursuant to the Uniform Commercial Code. Lessee authorized Lessor and/or Lessor's assignee and any subsequent assignees to file a financing statement signed only by Lessor or assignee in all places where necessary to perfect Lessor's security interest or to sign such financing statements on behalf of Lessee.

IN WITNESS WHEREOF Lessor and Lessee have executed this Lease as of the date and year first above written.

LESSEE Grant Company

BY [Signature] Partner

LEASING CONSULTANTS INCORPORATED

BY [Signature]

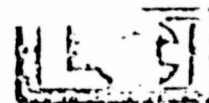
S.V.P. Lessor

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JA9

SABRELINER..1965 Model..1745 Total Hours..Engines Zero  
Time and 633 Hours since major..Standard Sabreliner 7-  
Place Interior..Collins CAT #2 Equipped..Collins AP-103..  
Dual Collins FD-103's..Collins Comparitor Warning  
System 54W1 Dual Collins 618M-1 Transceivers..Dual Collins  
51RV-1 Receivers..Dual Collins 51Y4-A ADF..Collins 512-4  
Marker Beacon..Collins Transponder 621A-3..Collins 360E-2  
DME..Collins WP-103 Radar..Sun Air HF Transceiver..  
Altimeter in Aircraft..Sperry Turbine Vibration Indicator  
System..Tri-Metallic Brakes..Landing Gear Door Mod..Main  
Entrance Door Stop





# GUARANTY to LEASING CONSULTANTS INCORPORATED

95-20 63rd Road, Forest Hills, N.Y. 11374

212-275-1500

Each of us severally requests you to extend credit to and to purchase notes, accounts and/or other obligations (herein generally termed "paper") from or otherwise to do business with

Grant Company, 4149 North Milwaukee Avenue, Chicago, Illinois 60641

(Company)

(City)

(State)

hereinafter called "Company", and to induce you so to do and in consideration thereof and of benefits to accrue to each of us therefrom, each of us as a primary obligor jointly and severally and unconditionally guarantees to you that Company will fully and promptly and faithfully perform, pay and discharge all its present and future obligations to you, irrespective of any invalidity therein, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefor; and agrees, without your first having to proceed against Company or to liquidate paper or any security therefor, to pay on demand all sums due and to become due to you from Company and all losses, costs, attorneys' fees or expenses which may be suffered by you by reason of Company's default or default of any of the undersigned hereunder; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper and/or security held, with or without notice to us.

No termination hereof shall be effected by the death of any or all of us. No termination shall be effective except by notice sent to you by registered mail naming an effective date after the date of receipt of such notice by you not less than 90 days from the receipt of such notice by you; or effective as to any of us who has not given such notice; or affect any transaction effected prior to the effective date of termination. Each of us waives notice of acceptance hereof and of presentment, demand, protest and notice of non-payment or protest as to any note or obligation signed, accepted, endorsed or assigned to you by said Company, and all exemptions and homestead laws and any other demands and notices required by law, and we waive all set-offs and counterclaims. You may, without notice to us, renew or extend any obligations of Company and/or of its customers and/or of co-guarantors, may accept partial payments thereon or settle, release, compound, compromise, collect or otherwise liquidate any thereof and/or security therefor in any manner, consent to the transfer of such security and bid and purchase at any sale without affecting or impairing the obligation of any of us hereunder.

This guaranty shall bind our respective heirs, administrators, personal representatives, successors and assigns, and shall ensure to your successors and assigns. All of your rights are cumulative and not alternative.

WITNESS our hands and seals this 11th day of April, 1969.

at Miami Beach, Florida

(State)

For  
Individual  
Guarantors

Lee Ratner (L.S.) Address: 800 Seventy-First Street  
Miami Beach, Florida  
(L.S.) Address:  
(L.S.) Address:  
Witness (L.S.) Address:

(CORPORATE SEAL)

For  
Corporate  
Guarantors

By President Attest: Secretary  
By President Attest: Secretary

(CORPORATE SEAL)

Note: Insert exact name of company in top blank line, with city and state. Individual guarantors must sign guaranty with titles. Sign simply John Smith, not "John Smith, President."

11

## AIRCRAFT SCHEDULE

212-275-1500

Grant Company  
4149 North Milwaukee Avenue  
Chicago, Illinois 60641

Purchase of 1st  
for \$79,500

**A. Equipment:**

|                                    |                            |
|------------------------------------|----------------------------|
| Manufacturer's Name and Trade Name | North American Sabre Liner |
| Year Manufactured                  | 1965                       |
| Model                              | 265-40                     |
| Manufacturer's Serial Number       | 38                         |
| Registration Certificate Number    | N299LR                     |
| Engine Name and Model              | Pratt & Whitney JT12A-6A   |
| Engine Number                      |                            |

8. Lessee agrees that each unit leased hereunder is of a size, design and capacity selected by Lessee and that Lessor is satisfied that the same is suitable for its purposes and that Lessor has made no representation or warranty with respect to the suitability or durability of any such unit for the purposes and uses of Lessee, or any other representation or warranty, express or implied, with respect thereto, or otherwise Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused, directly or indirectly, by any unit leased hereunder, or the use or maintenance thereof, or the repairs, servicing or adjustments thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused.

C. Term: Ninety Six (96) Months

D. For the use of the above listed aircraft the Lessee hereby agrees to pay the Lessor at the following rate and manner: **equal Monthly Payments of \$11,593.75** **Ninety Six (96)**

equal Monthly Payments of \$11,593.75. Ninety Six (96)

6. In accordance with Paragraph 7 of Lease, the Lessee shall also obtain and pay for public liability insurance, insuring the Lessor with insurance companies satisfactory to the Lessor, against damages or claims therefor, for personal injuries and death in limits of not less than \$1,000,000.00 and against damages of claims therefor for property damage in the amount of \$100,000.00 or certificate of insurance indicating such coverage. Lessee will undertake to defend and pay for all legal and other expenses including attorney's fees in connection with any suit brought against the Lessor by reason of any such claims for damages for personal injuries, death or property damage.

F. The Lessor acknowledges receipt of the sum of \$57,968.75/ which represents the first and last  
The second month's rent will be due and payable 31 days four months lease payments;  
term of this agreement all monthly payments will become due and payable. after shipment and thereafter on the same day of each month for the

[illegible]

M. The Lessor is hereby given the right and privilege upon reasonable prior notice to the Lessee and during Lessee's regular business hours to inspect said aircraft on the premises of the Lessee or wherever the aircraft is located. The aircraft shall be kept by the Lessee at the following location(s):

1. This schedule shall be deemed to have been made in New York State and shall be interpreted under the laws of the State of New York.

ACCEPTED as a Schedule to and as a part of the above numbered lease this 11th day of April 1969

LESSEE Grant Company

LEASING CONSULTANTS INCORPORATED

By Jack Weinstein, Partner BY Jack Weinstein



## OPTION TO PURCHASE

LEASING CONSULTANTS INCORPORATED

95-20 63rd Road, Forest Hills, N.Y. 11374

212-275-1500

TO:

Grant Company  
4149 North Milwaukee Avenue  
Chicago, Illinois 60641

LEASE NUMBER 1293

DATE April 11th, 1969

Provided that you shall have made all payments due under the subject lease and provided, further, that there is no default in compliance with any of the terms or conditions thereof, you shall have the option to purchase the equipment covered by said lease in its then condition and at its then location at the terminal date of said lease.

This option shall be exercised by delivery of written notice to us at least 31 days prior to the date as of which purchase is to be effected, together with the full net cash price of said equipment as set forth below:

The net cash purchase price will be \$ 79,500.00

LEASING CONSULTANTS, INCORPORATED

BY J/ESWTITLE Executive Vice PresidentDATE April 16, 1969



## EXHIBIT B - ASSIGNMENT FROM BANKRUPT TO DEFENDANT

JA13

Leasing Consultants Incorporated . . . New York Corporation with a principal

place of business at 1044 Northern Boulevard, Roslyn, New York 11576  
 (herein called the 'Assignor'), in consideration of One Dollar (\$1.00) lawful money of the United States of America and other good and valuable consideration, the receipt of which is hereby acknowledged, has sold, assigned, transferred and set over, and by this instrument does sell, assign, transfer and set over, unto NATIONAL BANK OF NORTH AMERICA, a national banking association (herein called the 'Assignee'), and unto the Assignee's successors and assigns, to its and to its successors' and assigns' own proper use and benefit, all the right, title and interest of the Assignor under, in and to that certain Lease Agreement, Lease No. 1293, dated as of April 11, 1969, between the Assignor, as lessor, and Grant Company  
 with a place of business at 4149 North Milwaukee Avenue, Chicago, Illinois 60641, as lessee (herein called the 'Lessee') and any and all Schedules (as defined in said Lease Agreement) executed pursuant thereto and made a part thereof, as said Lease Agreement and said Schedules may hereafter be amended or supplemented from time to time with the prior written consent of the Assignee (said Lease Agreement and said Schedules, as the same may be so amended or supplemented from time to time, being herein called the 'Lease'), including, without limitation, all rental payments and other moneys (including all insurance payments and losses) due and to become due to the Assignor under, and all claims for damages arising out of the breach of, the Lease, and the right of the Assignor to terminate the Lease, to perform thereunder and to compel performance of the terms thereof; this Assignment being delivered as security for any and all indebtedness and obligations of the Assignor to the Assignee now existing or hereafter incurred.

It is expressly agreed that, anything herein contained to the contrary notwithstanding, (i) the Assignor shall remain liable under the Lease to perform all the obligations assumed by it thereunder all in accordance with and pursuant to the terms and provisions of the Lease, (ii) the obligations of the Assignor under the Lease may be performed by the Assignee or its nominee or any other assignee, without releasing the Assignor therefrom or, unless otherwise expressly agreed to in writing by the party to be bound thereby, providing for or resulting in any assumption thereof, and (iii) the Assignee shall have no obligation, or liability under the Lease by reason of or arising out of this Assignment, nor shall the Assignee be required or obligated in any manner to perform or fulfill any of the obligations of the Assignor under or pursuant to the Lease, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.\*

The Assignor does hereby constitute the Assignee, its successors and assigns, the Assignor's true and lawful attorney, irrevocably, with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for money due and to become due under or arising out of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Assignee may seem to be necessary or advisable in the premises.

The Assignor agrees that at any time and from time to time, upon the written request of the Assignee and at the expense of the Assignor, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Assignee may deem desirable in obtaining the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, (i) the filing or recording of this Assignment (or any Schedule, amendment or supplement hereto), or a financing or continuation statement with respect hereto or thereto in accordance with the laws of any applicable jurisdictions and (ii) the taking of such further action as the Assignee may deem desirable to protect fully the Assignee's interest hereunder in accordance with the Uniform Commercial Code or any other applicable law. The Assignor hereby authorizes the Assignee to effect any such filing or recording as aforesaid (including the filing of any such financing statements or amendments thereto without the signature of the Assignor), and, at the option of the Assignee, the Assignee's costs and expenses with respect thereto shall be payable by the Assignor on demand.

The Assignor does hereby ratify and confirm the Lease and does hereby represent and warrant that the Lease is in full force and effect and enforceable in accordance with its terms, and that no default exists thereunder, and that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the Lease or of this Assignment or of any of the rights created by the Lease or this Assignment.

The Assignor does hereby further represent and warrant that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, any of its right, title or interest under, in or to the Lease, to anyone other than the Assignee, its successors or assigns, and that it will not, except with the prior written consent of the Assignee and upon the terms and conditions, if any, specified in any such consent, enter into any agreement amending or supplementing the Lease, deliver any notice of termination pursuant to the Lease, accept any payment from the Lessee, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease except as required thereunder.

This Assignment shall be binding upon the Assignor and its successors, and shall inure to the benefit of the Assignee, including its successors and assigns.

This Assignment shall be construed in accordance with and governed by the laws of the State of New York.

This Assignment may be executed in any number of counterparts, each of which for all purposes shall be deemed an original.

IN WITNESS WHEREOF, the Assignor has caused this instrument of Assignment to be executed as of the

13 day of February, 19 70.

\*and (iv) the rights being granted to the assignee herein are, where inconsistent, subject to the rights of the lessee of the lease so long as the lessee is not in default of the terms of the lease.

LEASING CONSULTANTS INCORPORATED

ASSIGNOR

By Edward J. [Signature] ATP  
 TITLE

EXHIBIT B

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----X  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

Plaintiff,

Index No. 74C 175

-against-

NOTICE OF MOTION

NATIONAL BANK OF NORTH AMERICA,

Defendant.  
-----X

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Anthony J. D'Auria, sworn to the 19th day of March, 1974 and upon the exhibits annexed thereto, the undersigned will move this Court at a Motion Term thereof to be held at the Courtroom of the Honorable Jack B. Weinstein, at the United States Courthouse, Cadman Plaza, Brooklyn, New York, on the 22nd day of April, 1974 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for judgment dismissing the complaint pursuant to Rules 12(b) and 56, Federal Rules of Civil Procedure, on the grounds that the complaint fails to state a claim upon which relief can be granted; the claim asserted in the complaint is barred by the Statute of Limitations and the plaintiff lacks the capacity to sue, and for such other, further and different relief as to this Court may seem just and proper.

Dated: New York, New York  
March 18, 1974

Yours, etc.,

JOHN J. HENSON, HENRIETTA A. RYAN  
ATTORNEYS AT LAW  
350 FIFTH AVENUE  
NEW YORK, NEW YORK

Attorneys for Defendant  
Office of the U.S. Attorney  
40 Wall Street  
New York, N. Y.

By





RULE 9(g) STATEMENT

JA15

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

Plaintiff,

Index No. 74C 175

-against-

STATEMENT PURSUANT TO  
RULE 9(G)

NATIONAL BANK OF NORTH AMERICA,

Defendant.  
-----X

(1) Leasing Consultants Incorporated ("LCI") was engaged in the business of leasing machinery, equipment and aircraft.

(2) In April, 1969, LCI leased a North American Sabre Liner to Grant Company ("Grant") for a term of eight years and at a monthly rental of approximately \$11,000.

(3) The records reveal no filing or recordation of an alleged option in Grant's favor to purchase the aircraft.

(4) On March 13, 1970, the Bank made a \$500,000 loan to LCI in consideration for which LCI executed a secured promissory note, a chattel mortgage on the aircraft leased to Grant and an assignment of the Grant lease.

(5) The chattel mortgage was duly recorded by the Bank with the Federal Aviation Agency; the Bank filed Form U.C.C. 1 Financing Statements with the Register of the City of New York and with the New York Secretary of State, and took possession and continually maintained possession of the lease between LCI and Grant.

(6) The Bank did not record the assignment of lease with the FAA.

(7) From and after the making of the loan, LCI permitted the Bank to collect the monthly rentals directly from Grant and to apply them to the installments due under the note and mortgage.

(8) On October 16, 1970, LCI was adjudicated a bankrupt, an event constituting a default under the mortgage.

(9) LCI's bankruptcy did not interrupt the payments received by the Bank from Grant. Indeed, the Trustee knew and consented to the receipt by the Bank of the payments from Grant and the Trustee made no objection to the application of those payments to the reduction of LCI's indebtedness.

(10) By the end of 1971, the Bank had received during the three year period from the date of adjudication over \$440,000 in reduction of the principal and interest due on LCI's loan. On November 12, 1973, the Bank and the Trustee consented to the sale of the aircraft to Grant, said sale being without prejudice to the Bank's rights. There was set aside from the proceeds of the sale the sum of \$160,473.44 representing the principal balance and accrued interest remaining due on the Bank's loan to LCI.

Dated: New York, New York  
March 18, 1974

COLE & DEITZ  
Attorneys for Defendant  
Office & P.O. Address  
40 Wall Street  
New York, New York 10005

AFFIDAVIT OF ANTHONY J. D'AURIA IN SUPPORT OF MOTION  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JA17

----- x

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt.

Plaintiff,

Index No: 74 C 175

-against-

NATIONAL BANK OF NORTH AMERICA,

Defendant.

AFFIDAVIT

----- x

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

ANTHONY D'AURIA, being duly sworn, deposes and  
says:

1. I am a member of the firm of Cole & Deitz,  
attorneys for defendant National Bank of North America  
(the "Bank"). This affidavit is based upon my examination  
of the Bank's records and, in part, upon my personal  
participation in the events described herein, and is  
submitted in support of the Bank's motion for judgment  
dismissing the complaint.

2. Leasing Consultants Incorporated ("LCI") was  
engaged in the business of leasing machinery, equipment and  
aircraft. In April, 1969, LCI leased a North American Sabre  
liner to Grant Company ("Grant") for a term of eight years  
and at a monthly rental of approximately \$11,000. A copy



of the lease is annexed hereto and made a part hereof as Exhibit "A". Although the plaintiff claims that at the time of the lease transaction Grant obtained an option to purchase the aircraft, no such option was ever filed or recorded, and no evidence of its existence is contained in the Bank's files.

3. In March, 1970, LCI applied to the Bank for a loan of \$500,000 and offered to secure that loan by an assignment to the Bank of the rentals generated by the Grant lease. Since the assignment alone created no security interest in the aircraft itself, the Bank conditioned the making of the loan upon receiving a chattel mortgage on the aircraft itself.

Thus, on March 13, 1970, the Bank made a \$500,000 loan to LCI in consideration for which LCI executed a promissory note, a chattel mortgage on the aircraft and an assignment of the Grant Lease. Copies of these documents are annexed hereto and made a part hereof as Exhibits "B", "C" and "D", respectively.

4. The chattel mortgage was duly recorded by the Bank with the Federal Aviation Agency ("FAA"); the Bank filed form U.C.C. 1 Financing Statements with the Register of the City of New York and with the New York Secretary of State, and kept possession of the chattel paper (the "Lease"). The Bank did not record the assignment of the lease with the Federal Aviation Agency.

5. From and after the making of the loan, the

Bank collected the monthly rentals on the aircraft directly from Grant and applied them to the installments due under the note and mortgage. On October 16, 1970, LCI was adjudicated a bankrupt, an event constituting a default under the terms of the mortgage.

LCI's bankruptcy did not interrupt the payments received by the Bank from Grant. Indeed, with the Trustee's full knowledge and consent, the Bank continued to receive the rental payments directly from Grant and continued to apply those payments in reduction of LCI's indebtedness as reflected in the note and mortgage. In fact, in June, 1971, the Trustee sought leave to sell the aircraft (which petition he subsequently withdrew), acknowledging in his petition that the Bank had a duly recorded chattel mortgage and was entitled to receive payment thereon from the rents generated by the Grant Lease. A copy of this application is annexed hereto and made a part hereof as Exhibit "I".

6. In 1971, after the Bank had received over \$440,000 in reduction of the principal and interest due on the loan, the Trustee claimed to have discovered an infirmity in the Bank's security position resulting from its failure to record the assignment of lease with the FAA. On or about the same time, Grant offered to purchase the aircraft at a price approximating its market value. Despite the existence of the controversy between them, the Bank and the Trustee consented to that sale, such consent being made expressly without prejudice to the Bank's rights. There

was set aside from the proceeds of the sale the sum of \$160,473.44 representing the principal balance and accrued interest remaining due on the Bank's loan to LCI.

7. In February, 1974, the Trustee commenced this action seeking to recover the \$440,000 received by the Bank and the \$160,000 now on special deposit. A copy of the summons and complaint is annexed hereto and made a party hereof as Exhibit "F". The gravamen of the Trustee's claim is that the Bank is not entitled to these monies simply because it failed to record the assignment of lease with the FAA. As the accompanying memorandum demonstrates, the Trustee completely ignores the fact that the Bank is entitled to the precise funds in question pursuant to the terms of the chattel mortgage, the validity of which has already been acknowledged by the Trustee.

Under these circumstances, the Bank moves for judgment dismissing the complaint.

---

ANTHONY J. D'AURIA

Sworn to before me this  
19 day of March, 1974.

---

Notary Public

SALLY FINGERMAN  
Notary Public, State of New York  
No. 24-6293360 Qual. in Kings Co.  
Certificate filed in New York County  
Commission Expires March 30, 1976



EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

JA21

EXHIBIT A-LEASE BETWEEN BANKRUPT AND GRANT

(Omitted here but printed at page JA7).

EXHIBIT B-SECURED PROMISSORY NOTE  
NATIONAL BANK OF NORTH AMERICA

JA22

SECURED PROMISSORY NOTE

\$500,000.00

March 13, 1970  
New York, New York

FOR VALUE RECEIVED, the undersigned LEASING CONSULTANTS INCORPORATED (the "Maker") promises to pay to the order of NATIONAL BANK OF NORTH AMERICA (the "Bank"), at its office at 44 Wall Street, New York, New York, in funds current at the New York clearing house, the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), with interest on the unpaid principal balance thereof at the rate of twelve percent (12%) per annum, payable as follows: (a) one payment on March 20, 1970 of principal in the sum of SIX THOUSAND ONE HUNDRED TWENTY TWO DOLLARS (\$6,122.00) plus interest from the date of the Note and (b) FIFTY NINE (59) consecutive monthly installments of principal and interest in the amount of ELEVEN THOUSAND ONE HUNDRED TWENTY-TWO DOLLARS (\$11,122.00) each, commencing on the 20 day of April, 1970 and continuing thereafter on the same day of each month, together with additional interest in the amount of TEN THOUSAND DOLLARS (\$10,000.00), which additional interest shall be payable on the date of the final payment provided for herein, whether by acceleration or otherwise. Interest shall be computed on the basis of a 360 day year composed of 12 months of 30 days each. In the event that any amount provided for herein shall not be paid when due, whether by acceleration or otherwise, the Borrower shall,

JA23

subject to the impositions of applicable law, pay interest on the amount then due at the rate of fourteen percent (14%) per annum, until such amount shall have been paid in full.

Payment of this Note is secured in accordance with the terms and provisions of a Chattel Mortgage, dated the date hereof, between the Maker and the Bank, providing for a lien upon a certain aircraft described therein, and an Assignment of Lease, dated the date hereof, by the Maker to the Bank, providing for an assignment of the lease covering such aircraft.

If one or more of the following events listed below shall occur ("Events of Default"), the entire unpaid principal balance of this Note and all other obligations and indebtedness owing to the Bank pursuant to the terms and provisions of the Chattel Mortgage referred to above or otherwise arising shall immediately become due and payable at the option of the Bank, without notice or demand except that for any Event of Default except for non-payment of money, the Maker shall be entitled to ten days after date of such notice within which to cure such default:

- (a) Default shall be made in the payment of any amount when due, by acceleration or otherwise, under this Note or under any other obligation or indebtedness of the Maker to the Bank;
- (b) An Event of Default under the Chattel Mortgage shall have occurred;
- (c) Failure of the Maker to obtain the consent of the lessee to the Assignment of Lease described hereinabove, within 45 days of the date of this Note;

(d) Any material representation, warranty, certificate, statement or report made in writing to the Bank in connection with this Note or in connection with any other indebtedness of the Maker to the Bank shall be incorrect in any material respect when made;

(e) Default shall be made in the payment of any obligation of the Maker for borrowed money to any other person, firm or corporation, when such obligation shall have become due in accordance with the terms thereof; or

(f) Any of the following shall occur: the dissolution of the Maker; the loss or cancellation of its legal status by reason of any judicial, extra-judicial, or administrative proceedings; the Maker shall be unable, or shall admit in writing its inability, to pay its debts as they mature; the Maker shall become insolvent or bankrupt or make an assignment for the benefit of the creditors; the Maker shall consent to the appointment of a trustee, or receiver for it or for a substantial part of its property; a trustee or receiver shall be appointed for the Maker or for a substantial part of its property without its consent; or bankruptcy, reorganization, arrangement, insolvency, liquidation or dissolution proceedings shall be instituted by or against the Maker, and any such involuntary petition shall <sup>not</sup> be dismissed within 90 days after filing thereof provided the Maker shall promptly interpose an answer to such petition.

In the event that this Note shall be placed in the hands of an attorney for collection by reason of any default



hereunder, the Maker agrees to pay attorneys' fees in the amount of fifteen percent (15%) of the unpaid principal balance hereof which amount the Maker agrees to be reasonable and, in addition, the Maker shall pay to the Bank, upon demand therefor, all other expenses incurred by it in connection with the enforcement of this Note, the Chattel Mortgage or Assignment of Lease referred to herein.

The rights, powers or remedies given to the Bank under this Note shall be in addition to all rights, powers and remedies given to it by virtue of the Chattel Mortgage or Assignment of Lease referred to herein or any statute or rule of law.

Any forbearance, failure or delay by the Bank in exercising any right, power or remedy under this Note or under the Chattel Mortgage or Assignment of Lease referred to herein or otherwise available to the Bank shall not be deemed to be a waiver of such right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude the further exercise thereof.

No modification or waiver of any provision of this Note, or the Chattel Mortgage or Assignment of Lease referred to herein shall be effective unless the same shall be in writing and signed by the Bank and any such modification or waiver shall apply only to the specific instance for which given.

This Note was made and delivered in the State of New York and shall be construed in accordance with the laws of such state.

The term "Bank" as used herein shall be deemed to include the Bank and its successors, endorsees and assigns.

LEASING CONSULTANTS INCORPORATED

By S/ Edward J. Weinstein

Address: \_\_\_\_\_  
\_\_\_\_\_

EXHIBIT C- CHATTEL MORTGAGE

JA27

CHATTEL MORTGAGE

THIS CHATTEL MORTGAGE, dated March 13, 1970,  
from LEASING CONSULTANTS INCORPORATED, a New York corpora-  
tion having an office at 1044 Northern Boulevard Roslyn,

New York New York (the "Company"), to NATIONAL  
BANK OF NORTH AMERICA, a national banking association having  
offices at 44 Wall Street, New York, New York 10005 (the  
"Mortgagee").

WHEREAS, the Company is the sole owner of the  
Sabreliner Executive Jet Aircraft described in Schedule I  
hereto attached (the "Aircraft"), which is completely equipped  
with the necessary aircraft engines and avionics and is other-  
wise in flying condition and is fully certificated under the  
Federal Aviation Act of 1958, as amended; and

WHEREAS, the Company is, simultaneously with the exe-  
cution and delivery of this Chattel Mortgage, borrowing the  
principal amount of \$500,000 and delivering to the Mortgagee  
a secured promissory note of the Company, dated the date here-  
of (herein, together with any extensions, renewals or amend-  
ments thereof, called the "Note") in the principal amount of

\$500,000, payable as follows: (a) one payment on March 20, 1970 of principal in the sum of SIX THOUSAND ONE HUNDRED TWENTY TWO DOLLARS (\$6,122.00) plus interest from the date of the Note and (b) FIFTY NINE (59) consecutive monthly installments of principal and interest in the amount of ELEVEN THOUSAND ONE HUNDRED TWENTY-TWO DOLLARS (\$11,122.00) each, commencing on the 20 day of April, 1970 and continuing thereafter on the same day of each month, together with additional interest in the amount of TEN THOUSAND DOLLARS (\$10,000.00), which additional interest shall be payable on the date of the final payment provided for herein, whether by acceleration or otherwise, such Note having a final maturity of February 20, 1975, and otherwise in the form of Exhibit A hereto; and

WHEREAS, the Company is executing and delivering this Chattel Mortgage in order to secure the prompt payment of the principal of and interest on the Note and the performance and observance by the Company of all its agreements and covenants in this Chattel Mortgage contained,

NOW, THEREFORE, in consideration of the amount loaned as above recited and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and to secure the prompt payment of the principal of an interest on the Note and the performance and observance by the Company of all of its agreements and covenants herein contained, the Company has transferred, granted, bargained, sold, conveyed, mortgaged, hypothecated and pledged, and does hereby transfer, grant, bargain, sell, convey, mortgage, hypothecate and pledge to the Mortgagee, its



successors and assigns, all of the property described in Schedule I hereto attached, together with all appliances, instruments, radios, navigation aids, equipment and accessories, all additions which may from time to time be installed in or be appurtenant thereto, all substitutions or replacements therefor, and all sales warranties and/or obligations to supply spare parts in respect thereof (herein called the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, to it and to its successors' and assigns' own use, benefit and behoof forever;

PROVIDED, HOWEVER, and these presents are upon the condition that, if the Company, its successors or assigns, shall pay or cause to be paid the principal of and interest on the Note and all other sums, together with interest, that may be owing and payable to the Mortgagee, its successors and assigns, as herein provided, this Chattel Mortgage and the estate and rights hereby granted shall cease to be binding and shall be void, otherwise to remain in full force and effect;

UPON CONDITION that, until the happening of any Event of Default hereunder, subject to the terms and provisions of the Note and the assignment by the Company to the

Mortgagee of Aircraft Lease No. 1193, dated April 11, 1969 between the Company, as lessor, and The Grant Company, and the schedule covering the Aircraft attached thereto (the "Aircraft Lease Assignment"), the Company shall have the right to possess the Mortgaged Property and to collect and enjoy the rents, issues, profits, revenues and income thereof.

IT IS HEREBY COVENANTED AND DECLARED by and between the parties hereto and their respective successors and assigns that the terms upon which the Mortgaged Property shall be held and used are as follows:

#### ARTICLE I

#### DEFINITIONS

SECTION 1.1.. For all purposes of this instrument, unless the context otherwise requires:

A. "This Chattel Mortgage" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more amendments or supplemental chattel mortgages.

B. "Company Order" and "Company Request" shall mean, respectively, a written order or request signed in the name of the

Company by the President or Vice President of the Company, and delivered to the Mortgagee.

C. "Officers' Certificate" shall mean a certificate signed by the President or a Vice President of the Company and delivered to the Mortgagee.

D. "Opinion of Counsel" shall mean a written opinion of counsel, who may be counsel for the Company, selected by the Company and acceptable to the Mortgagee.

E. "Event(s) of Default" shall have the meaning stated in Section 4.1.

## ARTICLE II

### INSURANCE ACCOUNT

SECTION 2.1. All moneys received by the Mortgagee as proceeds of insurance upon any part of the Mortgaged Property shall be deposited by the Mortgagee in a special account to be maintained by the Mortgagee at its offices at 44 Wall Street, New York, New York, and to be entitled "Leasing Consultants Incorporated Insurance Account" (the "Insurance Account"). The funds in the Insurance Account

shall be held by the Mortgagee as a part of the Mortgaged Property, and, unless an Event of Default, or an event which would constitute an Event of Default but for the requirement that notice be given or time elapse or both, shall have occurred and shall not have been remedied, such funds may be withdrawn by the Company from time to time and shall be paid by the Mortgagee upon Company Order, or reimburse the Company for, and up to an amount not exceeding, expenditures made to repair and/or restore the property damaged, but only upon receipt by the Mortgagee of the following:

A. A Company Request for the withdrawal and payment of specified proceeds of insurance then on deposit in the Insurance Account.

B. An Officers' Certificate dated not more than five days prior to the application for such withdrawal, setting forth as follows:

(1) that expenditures have been made by the Company in a specified amount for making repairs, restorations and/or replacements to make good the damage suffered to the Mortgaged Property, and that the Mortgagee then holds in the Insurance Account certain specified pro-



ceeds of insurance paid on account of such damage, and giving a brief description of such damage and of such repairs and/or restorations and/or replacements;

(2) that the amount so expended is not in excess of the fair value of such repairs and/or restorations and/or replacements at the date of the making thereof by the Company;

(3) that no part of such expenditures has been or is then being used, in any other previous or then pending application, as the basis for the withdrawal of any funds from the Mortgagee hereunder; and

(4) that there is no outstanding indebtedness known, after due inquiry, to the Company for the purchase price of, or for labor, wages, materials or supplies in connection with, such repairs and/or restorations and/or replacements, which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's, materialman's, statutory or other

similar lien upon the Mortgaged Property.

C. An Opinion of Counsel stating that the Company has acquired a good and valid legal title to said repairs and/or restorations and/or replacements and that all of the Company's right, title and interest in and to said repairs and/or restorations and/or replacements are then subject to this Chattel Mortgage as a valid first lien thereon.

After any Event of Default shall have occurred and during any period that any such Event of Default shall continue unremedied, and at any time after any of the remedies specified in Article IV shall have been exercised by the Mortgagee in accordance with the terms of this Chattel Mortgage, funds in the Insurance Account may at any time, or from time to time, be used, paid or applied, at the option of the Mortgagee, to effect the performance on behalf of the Company of the Company's obligations under this Chattel Mortgage, and/or the Note.

### ARTICLE III

#### COVENANTS OF THE COMPANY

The Company hereby covenants and warrants as follows:

SECTION 3.1. Warranty of Title. At the time of the execution and delivery of this Chattel Mortgage, the Company has good title to and is possessed of the Mortgaged Property, subject to no lien, charge or encumbrance,\* and has full power and lawful authority to transfer, grant bargain, sell, convey, mortgage, hypothecate and pledge the Mortgaged Property in the manner and form aforesaid.

The Company hereby does and will forever warrant and defend the title to the Mortgaged Property against the claims and demands of all persons whomsoever.

SECTION 3.2. Recording. The Company will cause this Chattel Mortgage at all times to be kept recorded, re-recorded, filed, refiled, registered and reregistered, in such manner and in such places as may be required or permitted under the Federal Aviation Act of 1958, as amended, or other applicable law, or as the Mortgagee may reasonably require, to preserve and protect the rights and security of the Mortgagee hereunder as to all the Mortgaged Property, and the Company will furnish to the Mortgagee promptly after the execution and delivery of this Chattel Mortgage evidence satisfactory to the Mortgagee that this Chattel Mortgage has been properly recorded, or has been received for record, under the Federal Aviation Act of 1958, as amended.

\* Except the lien, if any, of the lessee of the mortgaged property.

SECTION 3.3. To Maintain Priority of Lien; To Pay Taxes. This Chattel Mortgage is, and always will be kept, a direct lien upon the Mortgaged Property; and the Company will not create or suffer to be created any other lien or charge upon the Mortgaged Property or any part thereof or upon the income therefrom, and the Company will from time to time pay or cause to be paid as they become due and payable all taxes, assessments and governmental charges levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also all taxes, assessments and governmental charges levied or assessed or imposed upon the lien or interest of the Mortgagee in the Mortgaged Property, so that the lien of this Chattel Mortgage shall at all times be wholly preserved at the cost of the Company and without expense to the Mortgagee; and the Company will not suffer any other matter or thing whatsoever whereby the lien of this Chattel Mortgage might be impaired; provided, however, that the Company shall have the right to contest, in good faith, by appropriate proceedings, any such tax assessment or governmental charge, and pending such contest, may defer the payment thereof, so long as such deferment in payment shall not, in the opinion of the Mortgagee, subject the Mortgaged Property or any part thereof to forfeiture or loss, and the Company shall have on its books reserves deemed by the Company adequate with respect thereto.



SECTION 3.4 Operation and Maintenance of

Mortgaged Property. The Company will at all times cause the Aircraft (and related engines) to be used in a careful and proper manner, and the Mortgaged Property and every part thereof to be maintained, preserved and kept in good condition, repair and working order, and will cause the airworthiness certificate of the Aircraft to be maintained in good standing at all times under the Federal Aviation Act of 1958, as amended. The Company will cause the Mortgaged Property to be maintained, used and operated in conformity with all applicable rules, regulations and orders of governmental authorities having jurisdiction and the provisions of all insurance policies in effect with respect thereto. The Company will from time to time cause all needful and proper repairs to be made, so that at all times the efficiency of the Mortgaged Property will be fully maintained. The Company will cause to be replaced at its own expense or at the expense of the lessee of the Aircraft, the Aircraft (and all related engines, appliances, equipment, instruments and accessories) included in the Mortgaged Property that may be retired (whether by sale, expropriation, wearing out, loss or destruction or other cause) or may be in anywise rendered unfit for use, with replacements of substantially the same character and of as good material and construction, and of a fair value at least equal to the fair value immediately prior to such event, and

constructed and first placed in service not earlier than the respective dates of the construction and first placing in service of the units so retired or rendered unfit for use. All such replacements shall be and become a part of the Mortgaged Property and shall be subject to all of the terms of this Chattel Mortgage.

Replacements under this Section shall be reported by the Company to the Mortgagee from time to time whenever the aggregate cost to the Company of items not therefore reported shall exceed \$15,000, and such report shall describe in reasonable detail the property used for replacement and the property replaced thereby.

Promptly after the replacement of any engine, the Company will execute and deliver a supplement to this Chattel Mortgage (in form and substance satisfactory to the Mortgagee), which supplement, among other things, shall subject such replacement engine to the lien of this Chattel Mortgage. In connection with each such supplement, there shall be delivered to the Mortgagee an opinion of counsel satisfactory to the Mortgagee, with respect to the due authorization, execution and delivery of such supplement, its legality, validity and enforceability in accordance with its terms, and its due recording in accordance with applicable law in order to create a valid first lien on the property described in such supplement.

In addition to any and all other causes and conditions rendering an airplane unfit for use within the meaning of this Section, the grounding of an airplane by the withdrawal of an airworthiness certificate issued by the Federal Aviation Agency or any governmental agency substituted therefor shall be deemed to render the same unfit for such use.

Nothing in this Section contained shall obligate the Company to replace any item of property, if there shall, within thirty days after the same has been sold, expropriated, worn out, lost, destroyed or rendered unfit for use, be paid to or deposited with the Mortgagee to be held under Section 2.1 proceeds of insurance or other moneys in an amount at least equal to the estimated cost of replacement, as determined by the Mortgagee, of such item of property, or if, in the case of an airplane that has been grounded, appropriate action shall have been commenced by the Company within said period of thirty days to correct the cause of such grounding and, within ninety days thereafter, said cause shall have been corrected and the airworthiness certificate of such airplane reissued.

The Company agrees to place a plate in the cockpit of the Aircraft showing the Mortgagee's interest therein.

SECTION 3.5 To Insure. The Company shall maintain or cause to be maintained liability insurance and insurance upon the Aircraft, engines and all parts which are included in the Mortgaged Property, in such responsible companies and in such amounts and against such risks as are satisfactory to the Mortgagee, said insurance on the Aircraft in no event to be in an amount less than 110% of the unpaid indebtedness due the Mortgagee under the Note in the principal amount of \$500,000, referred to in the recitals contained in this Chattel Mortgage. All policies and other contracts for such insurance shall (i) name the Company as an insured, (ii) contain a breach of warranty provision, and (iii) provide that the proceeds of such insurance shall be payable to the Mortgagee as the interest of the Mortgagee may appear (by means of standard mortgagee clause without contribution). Each such policy or other contract or said mortgagee clause shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the Mortgagee for at least thirty days after written notice to the Mortgagee of cancellation.

All proceeds of insurance paid to the Mortgagee in accordance with this Section shall be held and paid over or applied by the Mortgagee as provided in Section 2.1.



As soon as practicable after the execution of this Chattel Mortgage, and prior to the expiration of each policy, and at any time upon reasonable request of the Mortgagee, the Company shall furnish to the Mortgagee an Officers' Certificate containing a detailed list of the insurance carried on the Mortgaged Property on the date therein specified (which shall be within thirty days of the filing of such certificate), and stating that said insurance complies with the requirements of this Section.

SECTION 3.6. Location of Aircraft. The Company will not, without the prior written consent of the Mortgagee, suffer or permit the Aircraft to be taken into Cuba or any of the so-called "Soviet-controlled areas", or into any satellite country of, or into any territory occupied by, the Union of Soviet Socialist Republics or China, will not suffer or permit the Aircraft to be taken into any recognized or threatened zone of hostilities unless fully covered to the Mortgagee's satisfaction by broad form war risk insurance or unless the Aircraft in question is operated under contract with the Government of the United States of America under which contract the Government assumes liability for any damage, loss or destruction, and will not base the Aircraft outside the United States of America and its territories and possessions.

The Company will not execute or permit or willingly allow to be done any action by which an insurance may be

suspended, impaired or cancelled, and will not permit or allow any of the Mortgaged Property to undertake any flight or run any risk or transport any passengers or cargo which may not be permitted or may be excluded from coverage by the insurance policies and contracts in force, without having previously insured such Mortgaged Property by additional coverage to extend to such flights, risks, passengers or cargoes.

SECTION 3.7. Possession and Transfer. The Company shall not part with possession of or enter into any lease with respect to the Aircraft without the prior written consent of the Mortgagee. The Company warrants and represents that the Aircraft is now subject to a Lease Agreement, dated April 11, 1969, between the Company, as lessor, and The Grant Company ("Grant"), as lessee, a true copy of which has been delivered to the Mortgagee, (the "Lease Agreement"), and that the Lease Agreement is in full force and effect, without amendment.

SECTION 3.8. Alterations and Additions. The Company shall not make any material alterations to the Aircraft without the prior written consent of the Mortgagee other than alterations to the interior configuration of the Aircraft which will not materially decrease the value of the Aircraft.

SECTION 3.9. Inspection by Mortgagee; Information.

The Company will at any and all times, upon the re-

quest of the Mortgagee and ~~at the expense of the Company,~~ permit the Mortgagee by its representatives to inspect the Mortgaged Property, and will afford and procure a reasonable opportunity to make any such inspection.

SECTION 3.10. Citizenship of the Company; Authority to Operate Aircraft. The Company and Grant are, and at all times until all indebtedness hereby secured shall have been paid in full will be, citizens of the United States as defined in Section 101 (13) of the Federal Aviation Act of 1958, as amended. Neither the Company nor Grant is an air carrier within the meaning of Section 101(3) of the Federal Aviation Act of 1958, as amended, and neither is required to hold an air carrier operating certificate issued by the Federal Aviation Agency or a certificate of public convenience and necessity issued by the Civil Aeronautics Board. The Company shall not, and shall not permit Grant to, operate the Aircraft in a manner or under circumstances which would require the issuance of such certificates by such agencies, unless such certificates shall have previously been obtained.

SECTION 3.11. Indemnity. The Company covenants and agrees that it will indemnify and protect the Mortgagee against all claims arising out of or in connection with the Company's ownership of or use of any of the Mortgaged Property.



SECTION 3.12. Performance of Company's Agreements.

The Company agrees that the Mortgagee may, at its option, perform any agreements of the Company under this Chattel Mortgage with respect to the Mortgaged Property which the Company shall have failed to perform, and the Company agrees to reimburse the Mortgagee for an expenses incurred in connection therewith.

ARTICLE IV

DEFAULTS AND REMEDIES

SECTION 4.1. Event(s) of Default. In case one or more of the following Event(s) of Default shall have occurred and shall not have been remedied:

A. default shall be made by the Company in the payment when due, whether by acceleration or otherwise, of any sum payable under this Chattel Mortgage or the Note; or

B. default shall be made in the performance of any of the covenants contained in Section 3.5, 3.6 or 3.7; or

C. default shall be made in the performance of any other covenant or agreement

of the Company in this Chattel Mortgage, and such default shall continue for a period of ten days after notice thereof from the Mortgagee; or

D. default shall be made by the Company or the lessee in the Lease Agreement, and such default shall remain unremedied for a period of thirty (30) days or more; or

E. default shall be made in the payment when due of any obligation of the Company for borrowed money; or

F. <sup>material</sup> any representation or warranty of the Company hereunder shall prove incorrect or untrue in any material respect; or

G. all or substantially all of the Mortgaged Property shall be condemned, seized or otherwise expropriated, or the management of such property shall be assumed, by any government or any officer or instrumentality thereof and shall be retained for any period of thirty consecutive days, unless within such thirty-day period the Mortgagee shall receive assurances, satisfactory to it, that the Company will be compensated therefor in amount, time



and manner satisfactory to the Mortgagee;  
or

H. any of the following shall occur:  
the dissolution of the Company; the loss or  
cancellation of its legal status by reason  
of any judicial, extra-judicial, or adminis-  
trative proceedings; the Company or Grant<sup>+</sup> or  
any guarantor of the obligations of the  
Company to the Mortgagee shall be unable, or  
shall admit in writing its inability, to pay  
its debts as they mature; the Company or Grant<sup>\*</sup>  
or any guarantor of the obligations of the  
Company to the Mortgagee shall become insolvent  
or bankrupt or make an assignment for the bene-  
fit of creditors; the Company or Grant<sup>+</sup> or any  
guarantor of the obligations of the Company to  
the Mortgagee shall consent to the appointment  
of a trustee or receiver for it or for a substan-  
tial part of its property; a trustee or receiver  
shall be appointed for the Company or Grant<sup>+</sup> or  
any guarantor of the obligations of the Company  
to the Mortgagee or for a substantial part of its  
property without its consent; or bankruptcy, re-  
organization arrangement, insolvency, liquidation  
or dissolution proceedings shall be instituted by  
or against the Company or Grant<sup>\*</sup> or any guarantor

of the obligations of the Company to  
the Mortgagee;

the Mortgagee may then, if and to the extent permitted by applicable law, have the right to exercise the remedies set forth in the following Sections of this Article.

SECTION 4.2. Acceleration of Unpaid Installments.

In case one or more of the Events of Default shall have happened and shall not have been remedied, the Mortgagee shall have the right to declare the entire unpaid amount due the Mortgagee under the Note due and payable, whereupon the same shall become immediately due and payable.

SECTION 4.3. Repossession. The Company agrees, to the full extent that it lawfully may, that, in case one or more of the Events of Default shall have occurred and shall not have been remedied, then, and in every such case, the Mortgagee, by agent or representative, shall have the right and power to take possession of all or any part of the Mortgaged Property, and to exclude the Company and all persons claiming under the Company wholly or partly therefrom, and thereafter to hold, store and/or use, operate, manage and control the same.

At the request of the Mortgagee, the Company shall promptly deliver or cause to be delivered to the Mortgagee, or to an agent or representative designated by the Mortgagee, all property to whose possession the Mortgagee shall at the

time be entitled hereunder, and the Mortgagee, its agents and representatives, shall have the right to enter upon any or all of the Company's premises and property to exercise the Mortgagee's rights hereunder.

Upon every such taking of possession, the Mortgagee may, from time to time, at the expense of the Mortgaged Property, make all such repairs, replacements, alterations, additions and improvements to and of the Mortgaged Property, as to the Mortgagee may seem proper. In each such case, the Mortgagee shall have the right to manage and control the Mortgaged Property and to exercise all rights and powers of the Company in respect of the Mortgaged Property as the Mortgagee shall deem best, including the right to enter into any and all such agreements with respect to the leasing and/or operation of the Mortgaged Property or any part thereof as the Mortgagee may see fit; and the Mortgagee shall be entitled to collect and receive all rents, issues, profits, revenues and other income of the same and every part thereof. Such rents, issues, profits, revenues and other income shall be applied to pay the expenses of holding and operating the Mortgaged Property and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Mortgagee may be required



or may elect to make, if any, for taxes, assessments, insurance and other proper charges upon the Mortgaged Property or any part thereof, and all other payments which the Mortgagee may be required or authorized to make under any provision of this Chattel Mortgage. The remainder of such rents, issues, profits, revenues and other income shall be applied only in accordance with Section 4.7.

SECTION 4.4. Power of Sale; Suits for Enforcement.

In case one or more of the Events of Default shall have happened and shall not have been remedied, the Mortgagee personally or by agents, with or without possession of the Mortgaged Property,

A. may, to the extent permitted by law, sell at one or more sales, as an entirety or in parcels as hereinafter provided, all or any part of the Mortgaged Property, such sale or sales to be made to the highest bidder at public auction, or to a purchaser at private sale, at such place or places and at such time or times, and upon such terms as the Mortgagee may fix and briefly specify in the notice of sale to be given as herein provided or as may be re-

quired by law; or

B. may proceed to protect and enforce the rights of the Mortgagee under this Chattel Mortgage by suit, whether for specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for the foreclosure of this Chattel Mortgage and the sale of the Mortgaged Property under the judgment or decree of a court of competent jurisdiction or for the enforcement of any other right, as the Mortgagee shall determine.

SECTION 4.5 Notice of Sale. Notice of any public sale under this Article shall state the time when and the place where the same is to be made, and shall contain a brief description of the property to be sold, and shall be sufficiently given if published once in each of any two successive calendar weeks in a daily newspaper in the English language, of general circulation in the city where the sale is to be made and customarily published on each business day of the year, whether or not such newspaper is published on Saturdays, Sundays and legal holidays (in each instance upon any business day of the week and in any such newspaper, but the publication



in the first calendar week to be made not less than fifteen days nor more than forty-five days prior to such sale), and otherwise as may be required by law and/or by order of a court, if any, having jurisdiction over such sale. In the event of a private sale, the Mortgagee shall give the Company not less than fifteen days' written notice of such proposed private sale, which notice shall contain the terms of such sale, and the Company shall have the right of first refusal to purchase upon the same terms and conditions.

SECTION 4.6. Delivery to Purchaser. Upon the completion of any sale under this Article, the Company shall deliver all of the property sold to the purchaser or purchasers at such sale within a reasonable time thereafter, but in any event full title and right of possession to such property shall pass to such purchaser or purchasers forthwith upon the completion of such sale. Nevertheless, if so requested by the Mortgagee or by any purchaser, the Company shall confirm any such sale or transfer by executing and delivering to such purchaser all proper instruments of conveyance and transfer and releases as may be designated in any such request.

Every such sale shall operate to divest all right, title, interest, claim and demand whatsoever of the Company of, in and to the property so sold, and shall be a perpetual bar,

both at law and in equity, against the Company and all persons claiming the property sold, or any part thereof, through the Company, its successors or assigns.

SECTION 4.7. Application of Proceeds. The proceeds of any sale of the Mortgaged Property, or any part thereof, under this Article, together with any other sums then held by the Mortgagee as part of the Mortgaged Property, shall be applied as follows:

A. First. To the payment of the costs and expenses of such sale, including counsel fees, the reasonable compensation of the Mortgagee's agents and attorneys, and all charges, expenses, liabilities and advances incurred or made by the Mortgagee, and all other sums payable by the Company under this Chattel Mortgage, and to provide adequate indemnity to the Mortgagee against liens, if any, claiming priority over or equality with this Chattel Mortgage; and

B. Second. The balance, if any, shall be held by the Mortgagee and shall be applied to the payment of accrued interest on and the unpaid

principal balance of the Note (the Company remaining liable for the unpaid balance of the Note), and to the payment of any other obligations of the Company to the Mortgagee hereunder, and any surplus thereafter remaining to be paid to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 4.8. Mortgagee May Purchase. At any sale under this Article, the Mortgagee or its agent may bid for and purchase the property offered for sale, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor. In case of any such sale to the Mortgagee or its agent, the Mortgagee may, for the purpose of making payment for the Mortgaged Property, or any part thereof, so purchased, use any claim then due and payable to the Mortgagee under the Note or hereunder, as a credit against the purchase price.

SECTION 4.9 Remedies Cumulative. No remedy herein conferred is intended to be exclusive of any other remedy, but every such remedy shall be cumulative and shall be in



addition to every other remedy herein conferred or now or hereafter existing at law or in equity or by statute.

No delay or omission of the Mortgagee to exercise any right or remedy arising hereunder shall impair any right or remedy or shall be construed to be a waiver of any Event of Default or an acquiescence therein; and every right and remedy given by this Chattel Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

SECTION 4.10. Discontinuance of Proceedings. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Chattel Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Company and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Chattel Mortgage, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken.

SECTION 4.11 Waiver of Rights. To the full extent that it may lawfully so agree, the Company will not at any time insist upon, plead, claim, or take the benefit or ad-

vantage of any appraisalment, valuation, stay, extension, moratorium or redemption law now or hereafter in force, in order to prevent, delay or hinder the enforcement of this Chattel Mortgage or the absolute sale of any portion or all of the Mortgaged Property, or the possession thereof by any purchaser at any sale under Section 4.4, and the Company, for itself and all who may claim under it, as far as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws. The Company, for itself and all who may claim under it, as far as it or they now or hereafter lawfully may, also waives all right to have the Mortgaged Property marshalled upon any foreclosure hereof and agrees that any court having jurisdiction to foreclose this Chattel Mortgage may order the sale of the Mortgaged Property as an entirety.

#### ARTICLE V

#### SUNDRY PROVISIONS

SECTION 5.1. Notices. Any request, order, direction, approval, consent, notice or other document provided or permitted by this Chattel Mortgage to be made upon, given or furnished to, or filed with the Mortgagee by the Company, shall be sufficient and effective for every purpose hereunder if and when made upon, given or furnished to, or filed with the Mortgagee in writing at its office at 44 Wall Street, New York,



New York 10005, Attention: Lease Financing Division.

Any request, order, consent, notice or other document provided or permitted by this Chattel Mortgage to be made upon, given or furnished to, or filed with the Company by the Mortgagee, shall be sufficient and effective for every purpose hereunder if in writing and mailed, first class postage prepaid, to the Company, addressed to it at

Attention: , or at such other address as may have been furnished in writing to the Mortgagee by the Company.

SECTION 5.2. Agents and Employees. The Mortgagee may execute any of its duties or powers hereunder by or through agents or employees.

SECTION 5.3 Transfer or Assignment. This Chattel Mortgage or any sums due or to become due hereunder may be transferred or assigned by the Mortgagee with notice thereof to the Company, and in such event the transferee or assignee shall have all the rights, powers, privileges and remedies of the transferor hereunder, and the Company's obligations hereunder shall not be subject to any defense, offset or counterclaim available to the Company against the transferor.

SECTION 5.4. Governing Law. This Chattel Mortgage has been delivered in the State of New York and the laws of

such State shall control the construction thereof and all questions which may arise as to the interpretation or performance thereof.

SECTION 5.5. Successors and Assigns. All the covenants, promises, stipulations and agreements of the Company in this Chattel Mortgage contained shall bind the Company and its successors and assigns and shall inure to the benefit of the Mortgagee and its successors and assigns.

SECTION 5.6. No Release. No transfer, renewal, extension or assignment of this Chattel Mortgage or any interest hereunder or destruction, confiscation, seizure, loss, injury or damage of or to all or any part of the Mortgaged Property shall release the Company from its obligations hereunder.

SECTION 5.7. Counterparts. This Chattel Mortgage may be executed in any number of counterparts and all such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

SECTION 5.8. Captions. The captions in this Chattel Mortgage are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 5.9. Severability. Wherever possible each provision of this Chattel Mortgage shall be interpreted in

such manner as to be effective and valid under applicable law, but if any provision of this Chattel Mortgage shall be prohibited by or invalid under such law such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Chattel Mortgage.

IN WITNESS WHEREOF, the Company has caused this Chattel Mortgage to be duly executed as of the day and year first above written.

LEASING CONSULTANTS INCORPORATED

By Edward J. Quinton *EJP*

[Corporate Seal]

STATE OF NEW YORK     )  
                               :  
 COUNTY OF NEW YORK    )

On the 13 day of March in the year 1970,  
 before me personally came Edward J. Weinstein  
 to me known, who, being by me duly sworn, did depose and  
 say that he resides 2764 Whitman Drive, Brooklyn, New York  
                               ; that he is the Executive Vice President  
 of Leasing Consultants Incorporated, the corporation  
 described in and which executed the above instrument;  
 that he knows the seal of said corporation; that the seal  
 affixed to said instrument is such corporate seal; that it  
 was so affixed by order of the Board of Directors of said  
 corporation, and that he signed his name thereto by like  
 order.

*Claire Schad*  
 \_\_\_\_\_  
 Notary Public

CLAIRE SCHAD  
 Notary Public, State of New York  
 No. 41-578-008  
 Office: New York County  
 Certificate filed in New York County  
 Commission Expires March 30, 1970

JA60

SCHEDULE I TO CHATTEL MORTGAGE

| QUANTITY | DESCRIPTION OF AIRCRAFT<br>AND EQUIPMENT | YEAR &<br>MODEL | MFG. SERIAL<br>NO. | FAA REG.<br>NO. |
|----------|--|-----------------|--------------------|-----------------|
| One (1)  | Sabreliner Executive<br>Jet Aircraft     | 1965/265-40     | 282-38             | N299LR          |
|          | Engine Numbers<br>(Pratt & Whitney)      | JT12A-6A        |                    |                 |



JA61

EXHIBIT D-ASSIGNMENT FROM BANKRUPT TO DEFENDANT

(Omitted here but printed at page JA13)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

|                                   |   |                        |
|-----------------------------------|---|------------------------|
| In the Matter                     | : | In Bankruptcy          |
| of                                | : | No. 70 B 656           |
| LEASING CONSULTANTS INCORPORATED, | : | ORDER TO SHOW CAUSE    |
| Bankrupt.                         | : | WHY PROPERTY SHOULD    |
|                                   | : | NOT BE SOLD FREE AND   |
|                                   | : | CLEAR OF LIENS, FIXING |
|                                   | : | THE LIEN, APPOINTING   |
|                                   | : | THE APPRAISER, AND FOR |
|                                   | : | PRIVATE SALE           |

-----x

6th At Mineola, New York, in said District, on the  
day of June, 1971.

Upon the annexed petition of George Feldman, Trustee herein, by his attorneys, Hahn, Hessen, Margolis & Ryan, and no adverse interest being represented, it is

ORDERED that National Bank of North America show cause before this court at United States Courthouse, West Wing, 262 Old Country Road, Mineola, New York, on June 16, 1971, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why the trustee herein should not be authorized to sell the property described in the annexed petition at private sale, pursuant to the rules of this court, free and clear of the lien of the mortgage thereon of National Bank of North America, the lien to attach to the proceeds of sale, and why this court should not determine the extent of said lien, and why this court should not grant said trustee such other and further relief as is just; and it is further

ORDERED that service of a copy of this order and of the petition upon which it is made upon the National Bank of North America at 44 Wall Street, New York City, personally, on or before June 17, 1971 shall be deemed good and sufficient service of this order and notice of the relief sought in said petition; and it is further

ORDERED, that *William Lynn & Lynn*

*Aircraft Sales, Inc*

a competent and disinterested person be and he hereby is appointed appraiser herewith to appraise, after being duly sworn, a North American Saber Liner, F.A.A. Registration No. N 299 LR; and to prepare and file in court his report of such appraisal; and the compensation of said appraiser is fixed at *\$135.00* ; and it is further

ORDERED that June *11*~~10~~, 1971 at a.m., is hereby fixed as the day and time of a hearing to be held before the undersigned at the United States Courthouse, West Wing, 262 Old Country Road, Mineola, New York, to consider the offer of The Grant Company to purchase the North American Saber Liner, Reg. No. N 299 LR and the lease agreement covering it, free and clear of the lien of the mortgage of National Bank of North America for the sum of \$560,000.00 and to consider any offer for said property (including an offer to purchase the Trustee's right, title and interest subject to outstanding liens and encumbrances) as may then and there be made; and it is further

ORDERED, that at least ten (10) days' notice by mail of the aforesaid hearing be given to the Creditor's Committee.

*S. Wm. J. Rudin*

Referee in Bankruptcy

5. As of June 21, 1971 (the projected closing date should the offer of Grant Company be approved by the Court) the lessee, Grant Co., will be liable under the lease, in futuro, for sixty-six (66) monthly payments of \$11,593.75 each, for a

total of \$765,187.50. In addition, it is expected that the lessee would exercise his purchase option for an additional \$79,500 for a grand total due to the trustee, in futuro, of \$844,687.50.

6. The \$844,687.50 is subject to a recorded mortgage in the hands of National Bank of North America. (There are no other liens of record.) If allowed to proceed to maturity, said mortgage will bring the bank an additional \$503,614.25. (A June 20, 1971 payout will reduce this amount to approximately \$410,000. The correct legal formula for determining the extent of the Bank's lien is in dispute. There is a considerable equity in this property for the estate).

7. This leaves the trustee a long term equity of \$341,073.25. Broken down this sum consists of 22 monthly rental payments from March, 1975 to December of 1976 for \$255,062.50; plus the purchase option (equivalent to minimum salvage value) of \$79,500 due in April of 1977; plus approximately \$6,510 in monthly payments throughout the term.

8. It must be noted that the \$340,000 figure is an expectancy and is contingent upon the continued financial well-being of The Grant Co. and Lee Ratner, the guarantor on the lease agreement, as well as the liquidation value of the airplane.

9. The trustee could merely sell his right, title and interest in the lease and aircraft. The offeror previously tendered the trustee an offer to purchase the trustee's right, title and interest in said lease and airplane for \$125,000. Said offer was rejected as being too low. However, such a sale is unattractive from the buyers point of view. Due to the large amount of money involved and the general reluctance of the buying public, petitioner believes a sale free and clear of liens will



realize a maximum price and will have the greatest net yield to the estate.

10. If it should be found to be in the best interests of the estate to sell said property to The Grant Company or to a higher bidder, these interests would be best served by a hearing on said offer at the earliest possible date for a private sale free and clear of the lien of the chattel mortgage. Payout figures for June 21, 1971 have been obtained from the bank. A hearing on June 17, 1971 would permit a June 21 closing and simplify an evaluation of the benefit the estate will receive from the proposed sale.

11. Three days notice of a hearing on the show cause application is reasonable and adequate under all the circumstances.

WHEREFORE, your petitioner prays for the attached order and that (1) he be authorized to sell said aircraft and lease agreement free and clear of the lien of said chattel mortgage; (2) the extent of said lien be fixed by this court; (3) the lien of the chattel mortgage in favor of National Bank of North America be transferred to the proceeds of the sale of the property covered by said chattel mortgage; (4) the Court appoint a competent and disinterested appraiser who shall appraise the aircraft and (5) your petitioner have such other and further relief as is just; all of for which no previous application has been made.

New York, New York  
June , 1971

Hahn, Hessen, Margolis & Ryan  
Attorneys for the Trustee

By

George A. Hahn

350 Fifth Avenue  
New York, New York 10001  
(212) 244-6800

LAW OFFICE OF  
DAVID M. STOLAR  
800 Seventy-first Street  
MIAMI BEACH, FLORIDA 33141

Union 5-3541

JA67

May 10, 1971

Hahn, Hessen, Margolis & Ryan  
350 Fifth Avenue  
New York, N. Y. 10001

Attention: Daniel A. Zimmerman, Esq.

Re: North American Aviation Sabreliner  
Model No. NA 265-40, Serial No. 282-38

Your Re: Leasing Consultants Incorporated  
Lease #1293 with Grant Co.

Dear Mr. Zimmerman:

I am in receipt of a copy of your letter of May 5, 1971 directed to the attention of John M. Zuro of The Grant Co.

In accordance with our telephone conversation of even date, this letter shall constitute an offer to purchase the subject aircraft, free and clear of all liens for a total price in the amount of \$560,000. The amount of this offer has taken into consideration the reduction of the principal due National Bank of North America as a result of the May rental payment of \$11,593.75 being made this date. I have figured the amount of the principal reduction resulting from the May payment in excess of \$6,000.

Accordingly, as evidence of good faith in the making of this offer, a check in the amount of \$12,500 issued to your law firm's Trust Account by The Grant Company in Chicago, Illinois is this date being forwarded to your office. Therefore, I would appreciate your advising the undersigned as to the acceptance of this offer by the committee as well as the setting of a date for a hearing by the Court for its approval thereof.

Thank you for your kind cooperation in this matter.

Very truly yours,

*David M. Stolar*  
DAVID M. STOLAR

DMS:sdw

cc: Mr. John M. Zuro, The Grant Company  
4149 N. Milwaukee Avenue, Chicago 60641  
CERTIFIED - R.R.R.

JA68

EXHIBIT F-COMPLAINT ANNEXED TO FOREGOING AFFIDAVIT

(Omitted here but printed at page JA3)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

74 Civ. 175

(Weinstein, J.)

Plaintiff,

-against-

NATIONAL BANK OF NORTH AMERICA,

Defendant.  
-----X

CROSS-MOTION

Plaintiff moves the court as follows:

1. That it enter pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, that the court, at the hearing on the motion, by examining the pleadings and the evidence before it, and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and

thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

This motion is based upon:

- (a) Pleadings;
- (b) Affidavit of Daniel A. Zimmerman, Esq.

dated April 16, 1974.

New York, New York  
April 16, 1974

HAHN, HESSEN, MARGOLIS & RYAN

By: 

Attorneys for Plaintiff  
350 Fifth Avenue  
New York, New York 10001  
Tel.: (212) 736-1000

To: COLE & DIETZ,  
Attorneys for Defendant  
40 Wall Street  
New York, New York 10005

Please take notice that the undersigned will bring the above cross-motion on for hearing before this Court at the United States Court House, 225 Cadman Plaza East, Brooklyn,



New York, on the 22nd day of April, 1974, at 9:30 o'clock  
in the forenoon of that day or as soon thereafter as coun-  
sel can be heard.

HAHN, HESSEN, MARGOLIS & RYAN

By: 

Attorneys for Plaintiff  
350 Fifth Avenue  
New York, New York 10001  
Tel.: (212) 736-1000

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

74 Civ. 175

(Weinstein, J.)

Plaintiff,

-against-

NATIONAL BANK OF NORTH AMERICA,

Defendant.

-----X

PLAINTIFF'S STATEMENT  
PURSUANT TO RULE 9g

A. The following is a statement of material facts as to which plaintiff believes no triable issue exists. It is submitted in support of plaintiff's cross-motion for summary judgment.

1. On or about April 11, 1969 Leasing Consultants Incorporated ("Leasing"), as lessor, and The Grant Company ("Grant"), as lessee, executed an aircraft lease (the "Grant lease") covering a 1965 North American Saber Liner, Registration number N299LR ("the Saber Liner.")

2. On or after April 17, 1969 Leasing purchased the Saber Liner from Jack Adams Aircraft Sales, Inc. for

A 3. Under the terms of the Grant lease, Grant was obligated to pay Leasing \$1,113,000.00 at a rate of \$11,593.75 per month for eight (8) years.

E+1 4. Leasing executed and delivered to Grant, an instrument granting Grant the option to purchase the Saber Liner at the expiration of the lease term for \$79,500.00.

-+1 5. The sum of \$1,192,500.00 paid in installments over eight years is substantially equivalent to the sum of \$825,000.00.

A 6. On or about March 13, 1970, National Bank of North America ("National") made a \$500,000.00 loan to Leasing.

A 7. Leasing executed and delivered to National the following documents in regard to said loan:

- (a) a "secured promissory note;"
- (b) a "chattel mortgage" covering the Saber Liner; and
- (c) an "assignment" of the Grant lease.

A 8. The chattel mortgage was properly filed for recordation with the Administrator of the Federal Aviation Administration ("Administrator").

- A 9. The Grant lease was not properly filed for recordation with the Administrator.
- A 10. Leasing's assignment of the Grant lease to National was not properly filed for recordation with the Administrator.
- A 11. On August 18, 1970 Leasing filed a petition for arrangement under Chapter XI of the Bankruptcy Act.
- A 12. On October 16, 1970 Leasing was adjudicated a bankrupt.
- A 13. Plaintiff, George Feldman, is the duly qualified and acting trustee in bankruptcy of Leasing.
- A 14. Subsequent to August 18, 1970, National collected thirty-eight (38) payments of \$11,593.75 each, or \$440,562.50, pursuant to the aforesaid assignment of the Grant lease.
- A 15. In November of 1973 the trustee and National joined to convey their various interests in the Saber Liner to Grant, without prejudice to their respective rights and claims against each other.
- A 16. The sum of \$160,473.44, representing the principal balance and accrued interest on National's loan to Leasing,

was set aside from the proceeds of said sale and is being held specially by the trustee.

K+ 17. SMC Investment Corporation is a creditor of Leasing with a claim provable under the Bankruptcy Act in a sum in excess of \$3,000,000.00.

K+ 18. Kelly Tractor Co. is a creditor of Leasing with a claim provable under the Bankruptcy Act in the sum of \$4,500.00.

B. The following is plaintiff's response to National's Rule 9g statement. Each response refers to a specific numbered paragraph in National's Rule 9g statement.

1. Admitted.

2. See paragraphs A-1, A-3 and A-4, supra. The conclusion that the Saber Liner was leased rather than sold is denied.

3. Admitted.

4. See paragraph A-7, supra.

5. Denies knowledge or information sufficient to form a belief as to whether National took and maintained possession of the Grant lease. The statement is otherwise admitted.



6. Admitted, but see paragraphs A-9 and A-10, supra.

7. Denied, except that it is admitted that there was a written instrument by which Grant stated that it would continue to make rental payments to Leasing in care of National. Upon information and belief the payments were deposited in an account maintained by Leasing at National and National charged said account each month for the loan installment due.

8. See paragraphs A-11 and A-12, supra. It is admitted that Leasing's adjudication as a bankrupt constituted an "event of default" under the terms of the chattel mortgage.

9. Denied, except that it is admitted that Grant made thirty-eight (38) payments under the Grant lease subsequent to August 18, 1970 which were received by National, and that the trustee did not advise National of his claim to those payments until approximately March of 1973.

10. Denied, except see paragraphs A-14, A-15 and A-16, supra.

C. The following is plaintiff's statement of material facts which are in dispute.

1. Whether National had actual notice of Grant's option to purchase the Saber Liner?

2. Whether National has and had possession of the original Grant lease?

New York, New York  
April 16, 1974

HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff

By: 

For the Firm

350 Fifth Avenue  
New York, New York 10001  
Tel.: (212) 736-1000

## AFFIDAVIT OF DANIEL A. ZIMMERMAN, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

Plaintiff,

-against-

Index No. 74 C 175

NATIONAL BANK OF NORTH AMERICA,

Defendant.  
-----x

AFFIDAVIT

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK)

DANIEL A. ZIMMERMAN, being duly sworn, deposes and  
says:

1. I am an attorney at law associated with the firm  
of Hahn, Hessen, Margolis & Ryan, attorneys for plaintiff,  
George Feldman, trustee. This affidavit is based upon my  
personal examination of the records of Leasing Consultants  
Incorporated, bankrupt, and upon my personal participation  
in some of the events described herein, and is submitted in  
opposition to defendant's motion for summary judgment and  
in support of plaintiff's cross-motion for summary judgment.

2. Leasing Consultants Incorporated ("Leasing"), a New York corporation, filed a petition for arrangement under Chapter XI of the Bankruptcy Act on August 18, 1970. Leasing was adjudicated a bankrupt by order dated October 16, 1970. Plaintiff, George Feldman, was appointed trustee in bankruptcy, qualified and is presently acting in that capacity.

3. Leasing was in the business of lease-financing. In effect, Leasing financed acquisitions of personalty by its customers, by purchasing equipment chosen by the customer and leasing that equipment to the customer. In all instances, the lessee's obligations under the leases, when paid, would return Leasing's purchase price plus interest. In the regular course of its business Leasing maintained separate files on each financing transaction.

4. Such a file was maintained in regard to a certain transaction between Leasing and The Grant Company ("Grant"). This file indicates that:

(a) On or about April 17, 1969 Leasing purchased a 1965 North American Saber Liner (the "Saber Liner") from Jack Adams Aircraft Sales, Inc. ("Jack Adams"). The purchase price was \$825,000.00. A \$25,000.00 deposit was paid by Grant on March 7, 1969 and the \$800,000.00 balance was paid by Leasing on or about May 12, 1969. Attached hereto and marked respectively

as exhibits 1, 2 and 3, are copies of the purchase agreement between Jack Adams and Leasing; a bank draft drawn by Jack Adams on April 17, 1969 payable by Leasing in the sum of \$800,000.00; and a bill of sale for the Saber Liner from Jack Adams to Leasing.

(b) Prior to Leasing's purchase of the Saber Liner, Leasing and Grant executed an agreement dated April 11, 1969 denominated an "aircraft lease" whereunder Grant was obligated to pay Leasing the sum of \$1,113,000 in ninety-six (96) monthly installments of \$11,593.75 each. A true copy of this agreement is annexed to the complaint, marked exhibit A thereto. At the same time Leasing executed an instrument which gave Grant the option of purchasing the Saber Liner for \$79,500 following completion of the payment schedule. A copy of this option agreement is also annexed to the complaint as part of exhibit A thereto. Upon execution of these agreements Grant paid Leasing the sum of \$57,968.75 representing the first and last four installments under the agreement. The \$57,968.75 was made up of the \$25,000.00 deposit made by Grant to Jack Adams and Grant's check No. 32642 in the sum of \$32,968.75 dated April 11, 1969 payable to Leasing. A copy of this check is annexed hereto, marked exhibit 4.

(c) At the time of its execution, the Grant lease was obviously a conditional sale contract or a disguised



security agreement. Over the course of the lease term, Leasing was to receive back its initial investment plus simple interest of 8.51%. And at the end of the term, Grant had an option to become the owner of the Saber Liner by paying an additional \$79,500, less than 10% of the original purchase price.

(d) On or about March 13, 1970, National Bank of North America ("National") made a \$500,000.00 loan to Leasing. The loan was to be collateralized by all of Leasing's interests in the Grant lease and the Saber Liner. To effectuate this transaction Leasing executed a "Secured Promissory Note" [see National's exhibit B], an "Assignment of Lease Agreement" [see exhibit B of complaint and National's exhibit D] and a "Chattel Mortgage" covering the Saber Liner [see National's exhibit C.] Leasing also executed UCC-1 financing statements in favor of National.

(e) Grant acknowledged the assignment of the Grant lease to National in writing and the same instrument provided that Grant would continue to make the payments to Leasing with the payments to be mailed to National. A copy of this agreement is annexed, marked exhibit 5. National would deposit each payment in a checking account maintained by Leasing at National. These payments were due on the 13th day of each month. On the 20th day of each month, National would debit the account in the amount

the loan installment, i.e. \$11,122.50. A copy of an internal memo from Ed Weinstein to David Miller, dated March 13, 1970, is annexed hereto, marked exhibit 6.

5. Deponent has made an independent investigation into the aforesaid transactions which revealed the following facts:

(a) Neither Leasing nor Grant attempted to record the Grant lease, either with or without the purchase option, with the Administrator of the Federal Aviation Administration (the "Administrator.")

(b) On or about March 18, 1970, National attempted to file the "chattel mortgage" for recordation with the Administrator. A copy of the transmittal letter from National's attorneys dated March 16, 1970 is annexed, marked exhibit 7. The chattel mortgage was returned because it did not contain a complete description of the aircraft engines. A copy of the F.A.A. transmittal letter dated March 24, 1970 is annexed, marked exhibit 8.

(c) On or about March 19, 1970, National attempted to file the assignment of the Grant lease for recordation with the Administrator. A copy of the transmittal letter from National's attorneys dated March 16, 1970 is annexed, marked exhibit 9. The assignment was returned because it did not contain a description of the property covered by the lease and because the lease agreement had not been previously filed for recordation. A copy of the F.A.A. transmittal letter dated March 24, 1970 is annexed, marked exhibit 10.

(d) According to a letter from National's attorneys dated March 31, 1970, National again transmitted the chattel mortgage with reference to the engines deleted, and again transmitted the assignment for filing, this time with "a xerox copy of the original lease agreement." A copy of this March 31, 1970 letter is annexed, marked exhibit 11. A copy of the lease was sent even though the F.A.A. had specifically requested "the original lease agreement, or a duplicate with ink signatures" signed by lessor and lessee. See exhibit 10. It appears that both the chattel mortgage and the assignment of the lease were returned again, because they were not recorded at that time.

(e) By letter dated April 22, 1970 National, by its attorneys, again transmitted the chattel mortgage for filing. A copy of this letter is annexed marked exhibit 12. The chattel mortgage was indeed filed on April 24, 1970 and recorded on April 30, 1970. The letter of April 22, 1970 also indicated that National would send the original lease and assignment for filing "as soon as same is available." The lease and assignment were never filed for recordation.

(f) In June of 1971, in Leasing's bankruptcy proceeding, plaintiff served National with an Order to Show Cause and Petition. [See National's exhibit D.] Paragraph 5 of the petition advised National of Grant's purchase option, assuming that National was previously unaware of it.

(g) In January of 1971, plaintiff requested Insured Aircraft Title Service, Inc. of Oklahoma City, Oklahoma to make a title search on the Sa-ber Liner. A copy of their two-page report is annexed, marked exhibit 13.

6. Early in 1973, the trustee determined that he had causes of action against various financial institutions which were the assignees of various "aircraft chattel paper". Suit was shortly thereafter commenced against Chase Manhattan Bank, N. A., and First National City Bank on March 22, 1973 and April 18, 1973 respectively. At or before this time deponent advised Cole & Deitz, the attorneys for National, of the claim of the trustee which is the basis of the pending suit. Suit was not commenced against National, because National, through its counsel, requested time to consider settling the action. The discussions that followed were lengthy and detailed though fruitless. When it was obvious that no settlement could be concluded, suit was commenced.

7. In October of 1973, Grant offered to purchase the Saber Liner for \$433,705.58. This sum was derived by discounting the thirty-nine remaining payments under the lease at 12% and by discounting the purchase option price at 7.5%. A copy of the written offer is annexed hereto marked exhibit 14. The offer was ultimately accepted on that basis.

8. The trustee's suit seeks to invalidate National's chattel paper security interest in the Grant lease, and to recover all post-petition payments made by Grant to National pursuant to that security interest. Grant's acknowledgement of the assignment [exhibit 5] makes it perfectly clear that Grant sent the payments to National on account of the Assignment of the lease and not on account of the chattel mortgage.

9. National's motion for summary judgment makes several alternative contentions to the affect that the complaint fails to state a claim upon which relief can be granted, to wit:

(a) The perfection of National's chattel paper security interest is governed by the Code and National perfected such interest by filing financing statements against Leasing and also taking possession of the original lease documents;

(b) The trustee is deemed to have had "actual notice" of the assignment of the Grant lease by Leasing to National because the assignment is referred to in the body of the properly recorded chattel mortgage; and



(c) National had a perfected security interest in Grant's monetary obligations under the lease under the terms of its properly filed chattel mortgage.

10. The trustee's responding contentions are that:

(a) Perfection of security interests in aircraft chattel paper are governed exclusively by the Federal Aviation Act of 1958;

(b) The reference to the assignment in the body of the chattel mortgage is ineffectual and does not constitute "actual notice" to the trustee of such assignment; and

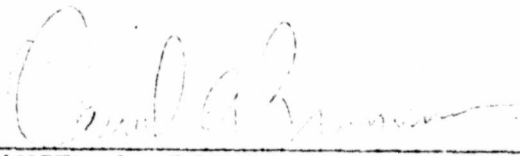
(c) The chattel mortgage does not give National any interest in Grant's monetary obligations under the lease.

(d) The Grant lease is a contract of conditional sale and the chattel mortgage is a nullity.

11. National also urges that the trustee's suit is barred by the applicable statute of limitations and that the trustee lacks the capacity to sue. The latter defense rests partially upon an apparent misconception by National to the effect that the trustee seeks to recover the lease payments under §70(c) of the Bankruptcy Act and not under §70(c) of the Bankruptcy Act. In point of fact the trustee has alternative legal theories based upon both sections.

The gist of National's attack at the §70(e) theory of action is that the complaint does not allege the existence of creditors of Leasing with claims provable under the Bankruptcy Act as to which Leasing's transfer of chattel paper security interest to National is invalid. The trustee believes that as a matter of law unrecorded aircraft conveyances are invalid against general unsecured creditors. Leasing has a large number of such creditors. As a small sample of such creditors, a copy of the claim of SMC Investment Corp. in the sum of \$3,457,267.39 and the claim of Kelly Tractor Co. in the sum of \$4,400.00 are annexed hereto marked collectively as exhibit 15. The accompanying memorandum demonstrates that these defenses fail as a matter of law.

12. Based upon the facts set forth and the law discussed in the accompanying memorandum, National's motion for summary judgment should be denied and plaintiff's cross-motion for summary judgment should be granted.

  
\_\_\_\_\_  
DANIEL A. ZIMMERMAN

Sworn to before me this  
16th day of April, 1974

  
\_\_\_\_\_  
NOTARY PUBLIC

VIRGINIA DALE ZAMOR  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 52-4503475  
Qualified in Suffolk County

EXHIBITS

| <u>Number</u> | <u>Description</u>  |
|---------------|---|
| 1             | Purchase Agreement dated April 11, 1969.  |
| 2             | Bank draft in sum of \$800,000.00 dated April 17, 1969.   |
| 3             | Bill of sale to Leasing for Saber Liner dated April 17, 1969.   |
| 4             | Check of Grant in sum of \$32,968.75 dated April 11, 1969.  |
| 5             | Grant's signed acknowledgement of the lease assignment to National dated March 26, 1970.                    |
| 6             | Leasing's internal memorandum dated March 13, 1970.   |
| 7             | Letter from Cole & Deitz to F.A.A. dated March 16, 1970. [Re chattel mortgage.]                             |
| 8             | Letter from F.A.A. to Cole & Deitz dated March 24, 1970. [Re chattel mortgage.]                             |
| 9             | Second letter from Cole & Deitz to F.A.A. dated March 16, 1970. [Re assignment of lease.]                   |
| 10            | Second letter from F.A.A. to Cole & Deitz dated March 24, 1970. [Re assignment of lease.]                   |
| 11            | Letter of Cole & Deitz to F.A.A. dated March 31, 1970.  |
| 12            | Letter of Cole & Deitz to F.A.A. dated April 22, 1970.  |
| 13            | Aircraft Title Report on Saber Liner dated January 19, 1971.  |
| 14            | Grant's written offer to purchase Saber Liner dated October 22, 1973.                                       |
| 15            | Claim of SMC Investment Corp. dated October 5, 1970 and Claim of Kelly Tractor Co. dated December 22, 1970. |

## JACK ADAMS AIRCRAFT SALES, Inc.

Twinkle Town Airport

10 Mi. SW Memphis Municipal Airport

P. O. BOX 121 WALLS, MISSISSIPPI - EXpress 1-4436

Domestic ☒

## PURCHASE AGREEMENT

Export ☐

April 11, 1969

The undersigned hereby agrees to purchase for delivery on or about May 1, 1969

19

North American NA265-40

NC No. 299-LR

Mfg. No. 282-39

Engine No.

For which he agrees to pay the sum of \$ 825,000.00

Plus extra equipment New license, New exterior  
paint, re-furnished interior, List of

Additional equipment attached \$ N/C

Sales Tax Out of state sale \$ None

Delivery charge paid in purchase price Net \$ 825,000.00

Deposit Paid March 7, 1969 \$ 25,000.00

Cash on delivery \$ 800,000.00

Allowance on used (Airplane) \$ no trade

Describe:

Total Credit Now \$

Total Credit after C. O. D. \$

First Balance to Finance \$ None

Insurance Coverage Pending

Total Balance to Finance \$

Interest % \$

Total Note \$

Terms of Payment:

Payable in monthly installments beginning 19

payment of \$ per month.

Varied payments of

Conditions of Sale:

Aircraft being sold to Leasing Consultants, Inc.,  
and leased to Grant Company and/or Mr. Lee Patner.

Delivery Instructions:

City and State Springfield, Ill. Airport same city

Date of ETA Approx May 1, 1969 Mode pending

Contact Mr. Mr. Martin Miller at 212 275-1300 in N. Y.,

Other instructions Mr. Henry Philbrick will pick aircraft up  
on or about May 1, 1969.I have read and agree to accept this plane with the knowledge that hours quoted are  
obtained from records correct to the best of your knowledge only. I understand Jack Adams  
Aircraft Sales, Inc. does not warrant time to be correct.

Leasing Consultants, Inc.

Contract No. 100-100

Purchaser

Contract No. 100-100

95-20 63rd Road

Address

This contract is binding and accepted  
and signed by the undersigned

Forrest Hills, New York 11374

City

Grant Company, Inc.

Buyer

Dealer Jack Adams

100-4645

JA90



# FIRST NATIONAL BANK IN DALLAS

RECORD

APR 24 1969

DALLAS, TEXAS, April 17

19 69

Upon presentation

PAY TO THE ORDER OF

JACK ADAMS AIRCRAFT SALES, INC.

\$ 800,000.00

EIGHT HUNDRED THOUSAND AND NO/100 -----DOLLARS

FOR North American NA265-40 N-299-LR, serial 282-38 (Bill of Sale and Release of Lien Enclosed) VALUE RECEIVED AND CHARGE THE SAME TO ACCOUNT OF

First National City Bank

LEASING CONSULTANTS, INC.

TO Greenpoint Branch

By - Jack Adams Aircraft Sales, Inc.

Brooklyn, New York

SIGNATURE

Attn: Mr. Schneider

*Jack Adams* President

Account: Leasing Consultants, Inc.

ADDRESS Box 121, Walls, Miss.

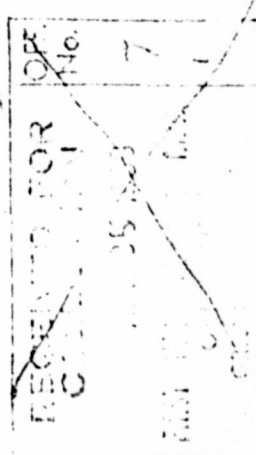
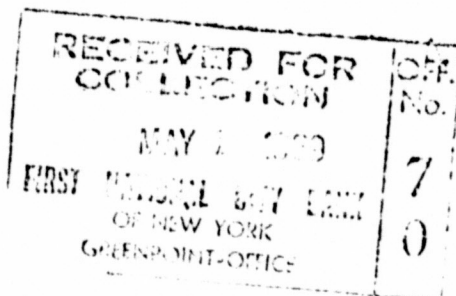
PHONE

95-20 63rd Road

Forest Hills, New York 11374

456

PAY TO THE ORDER OF  
First National Bank in Dallas  
DALLAS, TEXAS  
FOR DEPOSIT ONLY  
Jack Adams Aircraft Sales, Inc.  
ACCT. NO. 01-0144-8





## AIRCRAFT BILL OF SALE

Do not write in this block - for FAA use only.

MICROFILM CODE

1C

JC

For and in consideration of \$1.00 and one undersigned owner(s) of the full legal and beneficial title of the aircraft described as follows:

AIRCRAFT MAKE AND MODEL

North American NA265-40

MANUFACTURER'S SERIAL NUMBER

NATIONALITY AND REGISTRATION MARKS

282-38

N-299-LR

does this 17th day of April 19 69, hereby sell, grant, transfer and deliver all rights, title, and interests in and to such aircraft unto:

## NAME AND ADDRESS

(If individual(s), give last name, first name, and middle initial)

Leasing Consultants, Inc.  
95-20 63rd Road  
Forest Hills, New York 11374

PURCHASER

and to executors, administrators, and assigns to have and to hold singularly the said aircraft forever, and certifies that same is not subject to any mortgage or other encumbrance except:

TYPE OF ENCUMBRANCE

AMOUNT

DATED

IN FAVOR OF

in testimony whereof We have set our hand and seal this 17th day of April 19 69

|        | NAME(S)<br>(TYPED OR PRINTED)   | SIGNATURE(S)<br>(IN INK.) (IF EXECUTED FOR CO-OWNERSHIP, ALL MUST SIGN.) | TITLE<br>(IF SIGNED FOR A CORPORATION, PARTNERSHIP, OWNER, OR AGENT.) |
|--------|---------------------------------|--|---|
| SELLER | Jack Adams Aircraft Sales, Inc. | <i>Jack Adams</i>  | Vice President  |
|        |                                 |  |   |
|        |                                 |  |   |

## ACKNOWLEDGMENT

State of Tennessee

County of Shelby

On this 17th day of April 19 69 before me personally appeared the above named seller, to me known to be the person described in and who executed the foregoing bill of sale, and acknowledged that he executed the same as his free act and deed, and, if said bill of sale be that of a corporation swore that he was duly authorized to execute the same. Given under my hand and official seal the day and year written above.

(SEAL)

MY COMMISSION EXPIRES

NOTARY PUBLIC

the grant company Chicago, Illinois 60641

INVOICE NO.

AMOUNT

DISCOUNT

NET REMITTANCE

Balance of 1st month, and last 4 months of airplane lease

32,968.75

57 968.75

25 000 -

DEPOSIT ON AIRCRAFT

32 968.75

ST

93<sup>rd</sup>94<sup>th</sup>95<sup>th</sup>96<sup>th</sup>

Mon

THE ATTACHED CHECK IS TENDERED IN FULL PAYMENT OF YOUR ACCOUNT AS STATED ABOVE. IF THE AMOUNT IS INCORRECT RETURN WITH OUT ALTERATION.  
DETACH THIS PORTION BEFORE PRESENTING FOR PAYMENT. NO RECEIPT REQUIRED.

the grant company

32642

4149 north milwaukee avenue • chicago, illinois 60641

TCC 32642

April 11, 1969

2-134

710

PAY

32968.75

PAY  
TO  
THE  
ORDER  
OF

Leasing Consultants, Inc.

the grant company

John M. Zuro

TO

Lake View Trust and Savings Bank

Chicago, Illinois 60657

⑆07 8000 134⑆ 007 885 900

EXHIBIT 4

February 27, 1970

National Bank of North America  
Lease Financing Division  
44 Wall Street  
New York, New York 10005

Gentlemen:

The undersigned, Grant Company, referred to in the Assignment of Lease Agreement dated \_\_\_\_\_, to National Bank of North America (the Assignee referred to in said Assignment), in consideration of One Dollar (\$1.00) lawful money of the United States of America and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby acknowledge notice of and consents and agrees to the terms of said Assignment to the same extent as is set forth in full herein.

We will continue to make all rental payments due under the Lease to:

Leasing Consultants Incorporated  
c/o National Bank of North America  
Lease Financing Division  
44 Wall Street  
New York, New York 10005

We also hereby confirm that as of the date hereof there are 22 installments each in the amount of \$11,593.75 remaining unpaid during the initial term of the Lease Agreement No. 1293 dated April 11, 1969.

Very truly yours,

GRANT COMPANY

By Lee Ratner  
PARTNER

As Guarantor of the obligations of Grant Company pursuant to the Aircraft Lease Agreement and Aircraft Schedule No. 1293, dated April 11, 1969, between Leasing Consultants Incorporated, as Lessor, and Grant Company, as Lessee, we hereby acknowledge the continuing effectiveness of our guaranty and further consent and agree to the terms of this letter.

By Lee Ratner  
Lee RatnerSTATE OF FLA  
COUNTY OF Dade

On the 26th day of MARCH 1970, before me personally came LEE RATNER to me known, who, being by me duly sworn, did depose and say that he resides at 5921 S.W. 15th Ave. Miami Beach; that he is a PARTNER of Grant Company, the corporation described in and which executed the foregoing instrument as lessee; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it is an official order of the board of directors of said corporation; and that he signed his name thereto by like order.

Me

## Leasing Consultants Incorporated

David Miller

DATE: March 13, 1970

DM: Ed Weinstein

SUBJECT: The Grant Company

At a meeting with the National Bank of North America we today signed the installment note and agreements concerning the discount of the Grant Company lease. Documentation was approved by Lenny Weinstock of Weiss Bronston Rosenthal and Heller, who was present at the meeting. The note was dated March 13, 1970 and requires the first payment on March 20th in the amount of \$6,122.00 plus accrued interest from March 13th to March 20th. Thereafter, on the 20th of each month we will pay them a fixed monthly payment of \$11,122.00 representing principal and interest. Separate calculations by myself have indicated that these figures check and according to our tables, the monthly payment should be \$11,122.50.

We are also required to have the bank named as additional loss payee etc., by the insurance company, which has been taken care of via a telephone call to the insurance company.

We are also required to get a letter of agreement signed by Lee Ratner and/or The Grant Company, which has today been forwarded to him.

A separate letter to be given us through Mr. Weinstock by the bank indicates that if we pay off the loan within the first two years we are to pay them a \$5,000.00 penalty. If we pay off the loan after the second year but before the fifth year, we are to pay them a \$10,000.00 penalty. I think they forgot the \$10,000.00 gimmick at the end but I will find out when the final documentation comes through from Lenny Weinstock.

The monthly payment from Grant Company is \$11,593.75. With our payment being \$11,122.00 we cannot borrow any further on this lease unless the payments are stretched into the sixth and seventh years of the lease.

EJW:clr

cc: The Grant Company file

**COLE & DEITZ**  
**COUNSELORS AT LAW**  
**40 WALL STREET**  
**NEW YORK, N. Y. 10005**

BOWLING GREEN 9-2500

LONG ISLAND OFFICE  
 NATIONAL BANK OF NORTH AMERICA BLDG  
 WEST HEMPSTEAD, N. Y.  
 IVANHOE 1-7970

March 16, 1970

Federal Aviation Administration  
 Aircraft Registry, Dept. of Transportation  
 P.O. Box 25082  
 Oklahoma City, Oklahoma 73125

Re: Chattel Mortgage  
 Leasing Consultants Incorporated  
 to  
 National Bank of North America  
Registration # N299LR

Gentlemen:

Enclosed please find our firm's check in the sum  
 of Five (\$5.00) Dollars for recording the following  
 conveyance:

- 1) Chattel Mortgage on one North American Jet  
 265-40, Serial #282-38, Registration  
 #N299LR.

Please be good enough to record this document,  
 indicate the recordation of the original and return it to  
 the undersigned in the enclosed, stamped, self-addressed  
 envelope.

Very truly yours,

COLE & DEITZ

By

James D. Glass

JDG:ede  
 Encs:

*ok mail  
 4/14*



24 March 1970

AC-252

N299LR

James D. Glass, Esquire  
 Cole and Deitz  
 40 Wall Street  
 New York, New York 10005

The chattel mortgage dated 13 March 1970, executed by Leasing Consultants, Incorporated, in favor of the National Bank of North America is returned for a complete description of the aircraft engines. The Schedule 1 to the chattel mortgage shows the aircraft as N299LR and Pratt and Whitney Engines, Model JT12A-6A.

The Federal Aviation Regulations provide for the recordation of liens on aircraft engines that are 750 or more horsepower or equivalent. The chattel mortgage may be recorded against the engines when they are described by make, model, serial number and horsepower. The fee to record a lien against an engine is \$5.00. An additional \$10.00 should be submitted with the chattel mortgage.

If you do not wish to record the chattel mortgage against the engines, the make and model of the engines should be deleted from the Schedule 1.

We are holding your \$5.00 recordation fee pending receipt of a properly completed chattel mortgage.

ORIGINAL SIGNED BY

ACHES M. JONES

ACHES M. JONES

Conveyances Examiner, AC-252

1 Enclosure

cc: National Bank of North America

AC-252:AMJones:ndb:24 Mar 70

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|---------------|--|
| CONCURRENCES  |  |
| RTG. SYMBOL   |  |
| INITIALS/SIG. |  |
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| DATE          |  |

COLE & DEITZ  
COUNSELORS AT LAW  
40 WALL STREET  
NEW YORK, N. Y. 10005

BOWLING GREEN 9-2500

LONG ISLAND OFFICE  
NATIONAL BANK OF NORTH AMERICA BLDG.  
WEST HEMPSTEAD, N. Y.  
IVANHOE 1-7970

March 16, 1970

Federal Aviation Administration  
Aircraft Registry, Dept. of Transportation  
P.O. Box 25082  
Oklahoma City, Oklahoma 73125

Re: Assignment of Lease  
Leasing Consultants Incorporated  
to  
National Bank of North America  
Registration #N299LR

Gentlemen:

Enclosed please find our firm's check in the sum  
of Five (\$5.00) Dollars for recording the following  
conveyance:

- 1) Assignment of lease for one North American Jet  
265-40, Serial #282-33, Registration  
#N299LR.

Please be good enough to record this document,  
indicate the recordation of the original and return it to  
the undersigned in the enclosed, stamped, self-addressed  
envelope.

Very truly yours,

COLE & DEITZ

James D. Glass

JEG:edc

Encs:

Certified Mail - R.R.R.

*Handwritten:*  
c 48 Mar 19  
5231 OK 15.00

24 March 1970

AC-252

HE291R

James D. Glass, Attorney at Law  
Cole and Deitz  
40 Wall Street  
New York, New York 10005

The assignment of lease agreement dated 13 March 1970 executed by Leasing Consultants, Inc. to the National Bank of North America enclosed with your letter of 16 March 1970 is returned for description of the property covered by the lease. The make, model, serial number, and FAA registration of each aircraft, and the make, model, serial number, and horsepower of each engine of 750 horsepower or more should be shown.

The original lease agreement, or a duplicate with ink signatures, must be submitted before we may record the assignment. The lease agreement must be signed by the lessor and lessee.

The fee to record the lease and to record the assignment is \$5.00 for each aircraft and for each engine listed on each document. We received \$5.00 with the assignment. Appropriate fees should accompany the lease and the assignment.

ORIGINAL SIGNED BY  
AGNES M. JONES

AGNES M. JONES  
Conveyances Examiner, AC-252

1 Enclosure

cc: Leasing Consultants, Inc.

cc: National Bank of North America

cc: Grant Company

AC-252:AMJONES:ndb:24 Mar 70

|               |
|---------------|
| CONCURRENCES  |
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| INITIALS/SIG. |
| DATE          |

COLE & DEITZ  
COUNSELORS AT LAW  
40 WALL STREET  
NEW YORK, N. Y. 10005

BOWLING GREEN 9-2500

LONG ISLAND OFFICE  
NATIONAL BANK OF NORTH AMERICA BLDG.  
WEST HEMPSTEAD, N. Y.  
IVANHOE 1-7970

DEITZ  
NETT  
EVINE  
MAN  
LAUFER  
WEIR  
WICK D. SCHROEDER  
L. CROMAN  
H. THIELEN SULLIVAN  
OLD J. HOFFMAN  
CHARD B. TEIMAN  
ANTHONY J. DAURIA  
EDWARD N. MEYER  
JAMES D. GLASS  
KENNETH T. CASCOONE  
BRIAN A. MULLANEY  
MITCHELL FENTON  
JONATHAN GOLDSTEIN  
LAWRENCE S. BURSTEIN  
SHEPHERD W. MELZER  
MARIO DEBELARDINO  
JACK J. LEVINSON  
COUNSEL

March 31, 1970

Federal Aviation Administration  
Department of Transportation  
P. O. Box 25082  
Oklahoma City, Oklahoma 73125

Att: Agnes M. Jones

Re: AC-252  
N229LR  
Leasing Consultants, Inc.

Dear M's Jones:

I have received your letter of March 24, 1970 and in view of the present unavailability of the serial number of the engines we are returning the Chattel Mortgage for filing removing references to the engines. Upon obtaining the required information, we will file a supplemental Chattel Mortgage if this is acceptable.

I also re-enclose assignment of lease, plus a xerox copy of the original lease agreement between Grant Company and Leasing Consultants Incorporated, plus our firm's check in the sum of \$5.00 to cover the recording thereof.

If this presents any problems, please call me collect or write upon receipt of the enclosures so that any problems may be resolved.

We appreciate your cooperation.

Very truly yours,

JDG/pmce  
Encls.

James D. Glass

P.S. Please return the originals of both the assignment of lease and the Chattel Mortgage.



COLE & DEITZ  
COUNSELLORS AT LAW  
40 WALL STREET  
NEW YORK, N. Y. 10005

BOWLING GREEN 9-2500

LONG ISLAND OFFICE  
NATIONAL BANK OF NORTH AMERICA BLDG  
WEST HEMPSTEAD, N. Y.  
IVANHOE 1-7970

April 22, 1970

Federal Aviation Administration  
Department of Transportation  
P.O. Box 25082  
Oklahoma City, Oklahoma 73125

Att: Mr. Joseph Kordish

Re: Leasing Consultants, Inc.

Dear Mr. Kordish:

I enclose an original and one certified copy of a Chattel Mortgage covering one Sabreliner Executive Jet Aircraft, FAA Registration #N299LR. You will note that the schedule contains the manufacturers serial number for each of the engines, as per your request.

I also enclose our Firms' check in the sum of \$10.00 and this, in addition to the \$10.00 recently sent you should be more than sufficient to pay the required fee.

I would appreciate your returning the original of such Chattel Mortgage after you have recorded same. I will send you the original and certified copy of the lease for such aircraft and the original and certified copy of the Assignment, as soon as same is available.

Please be good enough to acknowledge the recording of the Chattel Mortgage by stamping same with your date stamp and returning the original to me in the self-addressed envelope.

Many thanks for your kindness and cooperation.

Very truly yours,

COLE & DEITZ

By

James D. Glass

Encs:



## AIRCRAFT TITLE REPORT from FAA RECORDS SEARCH

FOR

BY

George Feldman c/o Daniel A. Zimmerman  
Hahn, Hessen, Margolis and Ryan  
350 Fifth Ave.,  
New York, New York 10001

INSURED AIRCRAFT TITLE SERVICE, INC.

P.O. Box 19527, Oklahoma City, Okla. 73119

405 / 681-6663

Reference ;

FAA Records Search revealed the following TITLE  
information on the Aircraft herein described ;

Registration N 299 LR North American Aviation Model NA 265-40

Serial no. 282-38

Record Owner Leasing Consultants, Inc.  
1044 Northern Blvd., Forest Hills, New York 11374

Type Corporation

Signed by Illegible

Title V. Pres.

Date regstrd. 5-19-69

Acquired by Bill of Sale

Date 4-17-69

Date Filed 5-15-69

Recorded 5-19-69

FAA doc.# R 32382

Previous Owner Jack Adams Aircraft Sales, Inc.  
Twinkletown Airport, Box 121, Walls, Miss. 38680

Date regstrd. 4-4-69

SUBJECT TO Chattel Mortgage (Covers 1 aircraft) Dated 3-13-70

Filed at FAA 4-8-70

Recorded 4-30-70

Amount \$ TOTAL NOT GIVEN  
FAA doc.# P 64270

Drawn by Leasing Consultants, Inc.  
(ADDRESS SAME AS ABOVE)

In Favor of National Bank of North America  
44 Wall Street, New York, New York 10005

Assigned to

Date Assigned

Recorded

FAA doc.#

Reassigned to

Date Reassigned

Recorded

FAA doc.#

SUBJECT TO

Filed at FAA

Dated

Amount \$

Drawn by

Recorded

FAA doc.#

In Favor of

\* and 2 engines)

SEE ATTACHED SHEET FOR ADDITIONAL INFORMATION

Title search fee \$25.00

Rush charge \$

Extra time chg. \$

Phone charge \$

PREPAID \$ ( )

Date 1-19-71

Time 8:00 a.m. csty

TOTAL DUE \$25.00

INSURED AIRCRAFT TITLE SERVICE, INC.

by

Title Examiner

bk/fw

George Feldman c/o Daniel A. Zimmerman

FAA letter dated 3-24-70 to James D. Glass, Attorney at Law, Cole and Deitz, 40 Wall Street, New York, New York, 10005 stating: The assignment of lease agreement, dated 3-13-70 executed by Leasing Consultants, Inc. to the National Bank of North America enclosed with your letter of 3-16-70 is returned for description of the property covered by the lease. The make, model, serial number, and FAA registration of each aircraft, and the make, model, serial number, and horsepower of each engine of 750 horsepower or more should be shown.

The Original lease agreement, or a duplicate with ink signatures, must be submitted before we may record the assignment. The lease agreement must be signed by the lessor and lessee.

The fee to record the lease and to record the assignment is \$5.00 for each aircraft and for each engine on each document. We received \$5.00 with the assignment. Appropriate fees should accompany the lease and the assignment.

Letter to FAA dated 4-22-70 from Cole and Deitz Counsellors at Law, 40 Wall Street, New York, New York, 10005 stating in part: I will send you the original and certified copy of the lease for such aircraft and the original and certified copy of the assignment, as soon as same is available.

bk-

LAW OFFICES OF  
DAVID M. STOLAR  
1668 KENNEDY CAUSEWAY  
MIAMI BEACH, FLORIDA 33141  
TELEPHONE (305) 865-3541

October 22, 1973

Certified Mail #657674  
Return Receipt Requested

Hahn, Hessen, Margolis & Ryan  
350 Fifth Avenue  
New York, New York 10001

Attention: Daniel A. Zimmerman, Esquire

Re: North American Aviation Sabreliner  
Model No. NA 265-40, Serial No. 282-38

Your Re: Leasing Consultants Incorporated  
Lease #1293 with Grant Co.

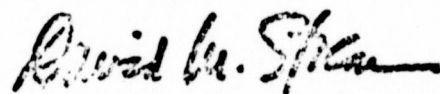
Dear Mr. Zimmerman:

On behalf of my client, the Grant Co., this letter shall constitute a firm offer to purchase the above described aircraft, free and clear of all liens, for a total purchase price in the amount of \$433,705.58. The amount of \$433,705.58 is computed by taking the present worth of 39 monthly payments of \$11,593.75 at 12% per annum and the present worth of \$79,500 compounded monthly at 7-1/2% per annum over 43 months. These are the terms that were worked out by yourself and Joel Ratner of the Grant Co. The amount of this offer is inclusive of the payment of \$11,593.75, which was due on October 13, 1973. In other words, such amount is the pay-off figure. The Grant Co. is prepared to make payment of this offer on November 1, 1973.

Accordingly, it would be appreciated if this offer were presented to the Court for its approval at the earliest possible time and, if acceptable, a closing may take place on November 1. Therefore, I would appreciate your advising the undersigned as to the disposition of this offer.

Thank you for your kind cooperation in this matter.

Very truly yours,



DAVID M. STOLAR

DMS/cw

Enclosure

# CITY COMPUTING SERVICES

JA104

Dade Commonwealth Building  
FR 4-3456 • Miami, Florida 33132

October 22, 1973

David Stoler  
1666 Kennedy Causeway  
Miami Beach, Fla. 33141

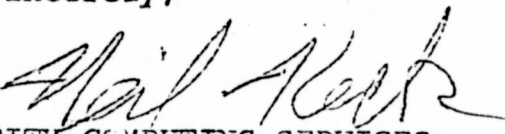
Att: Mr. Joel Ratner

To Whom It May Concern:

The present worth of \$79,500 compounded monthly  
at  $7\frac{1}{2}\%$  per annum over 43 months is \$60,815.42.

The Present worth of 39 monthly payments of \$11,593.75  
at 12% per annum is \$372,890.16

Sincerely,

  
CITY COMPUTING SERVICES  
Neil Keck

NK/jw

## UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

NEW YORK

Division

IN THE MATTER OF LEASING CONSULTANTS INC.

~~Debtor~~IN RE: Proceedings for  
an Arrangement  
No. 70-13-856

IMPORTANT: Filing Name of Debtor

Debtor.

REFeree IN BANKRUPTCY

Rudin

(NAME OF REFeree)

## PROOF OF CLAIM IN BANKRUPTCY

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ss.

E. William Savage, of No 1888 Century Park East

in Los Angeles County of Los Angeles State of California, deposes and says:

IF CLAIMANT IS AN INDIVIDUAL

I (a) That he is the claimant herein

IF CLAIMANT IS A PARTNERSHIP

I (b) That he is a member of \_\_\_\_\_, a copartnership composed of deponent and \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_, and carrying on business at No \_\_\_\_\_ Street, in \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

IF CLAIMANT IS A CORPORATION

I (c) That he is the Vice President of SMC Investment Corporation, a corporation organized under the laws of the State of Delaware, and carrying on business at No 1888 Century Park East, in Los Angeles County of Los Angeles, State of California, and is duly authorized to make this proof of claim on its behalf.

IF MADE BY AGENT OR ATTORNEY:

I (d) That he is agent or attorney of \_\_\_\_\_, (CREDITOR) of No \_\_\_\_\_ Street, in \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; that deponent is duly authorized by said \_\_\_\_\_ to make this proof of claim in his behalf, that said proof cannot be made by said \_\_\_\_\_ (CREDITOR) in person because \_\_\_\_\_.

2. That the above named bankrupt (or debtor) was at and before the filing by (or against) him of the petition herein (for adjudication of bankruptcy and still is, justly and truly indebted (or liable) to said deponent (or partnership or corporation) in the sum of Three Million Four hundred Fifty-Seven Thousand Two hundred Sixty-Seven & 39/100 dollars (\$3,457,267.39)

3. That the consideration of said debt (or liability) is as follows:

See attached Rider.

4. That no part of said debt (or liability) has been paid, except None

5. That there are no set off or counterclaims to said debt (or liability), except None

6. That deponent (or said partnership or said corporation) does not hold, and has not, nor has any person by his (or its) order, or to deponent (or partnership or said corporation) use, had or received, any security or securities for said debt (or liability), except None

7. If the debt or liability is found upon an instrument of writing, that the instrument upon which said debt (or liability) is found is attached hereto and is a true and correct copy of the original instrument.

8. If the debt or liability is found upon an account, that the said debt was for well balanced due on \_\_\_\_\_, that no note, or other negotiable instrument, has been received by deponent (or partnership or said corporation) for that the said debt is evidenced by a note, or other negotiable instrument, which is attached hereto, and that the judgment is not to be entered thereon, except \_\_\_\_\_.

9. This claim is filed as an UNSECURED CLAIM

(Deponent sign X)

E. William Savage

Date October 5, 1970

Filing Name of Debtor



UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NEW YORK

335a

In the matter of

LEASING CONSULTANTS, INCORPORATED

In Bankruptcy

No. 70 B 656

FILED

(Important—Insert name of bankrupt or debtor above).

## PROOF OF CLAIM BY INDIVIDUAL

DEC 29 1970

KELLY TRACTOR CO.

, of No. P. O. Box 44-567,

IN THE OFFICE OF  
WILLIAM J. RUSSELL  
REFeree IN BANKRUPTCY

In Miami, County of Dade, State of Florida, says,

1. That Leasing Consultants, Incorporated, the above-named bankrupt (or debtor), was at and before the filing by (or against) him of the petition for adjudication of bankruptcy, and still is, justly and truly indebted (or liable) to the undersigned in the sum of \$4,400.00 dollars.
2. That the consideration of this debt (or liability) is as follows: One Townmotor Lift Truck, Model 351S, Serial # 351S0521

3. That no part of the debt (or liability) has been paid, except None.

4. (To be completed if claim is for wages)—That said sum, the amount of the indebtedness herein claimed, is due to said claimant for wages for services rendered the bankrupt (or debtor) by said claimant during the period from 196 , to Dollars, and that of said amount the sum of (\$ ) is claimed as a priority for the said services so rendered within the period of three months immediately preceding the commencement of proceedings herein, viz: for the period of 10 , extending from 19 , at the rate of to Dollars (\$) per ; Social Security No. 5. That there are no set-offs or counterclaims to the debt (or liability) except None.

6. That this creditor does not hold, and has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received, any security or securities for the debt (or liability), except

7. [If the debt or liability is founded upon an instrument of writing.] That the instrument upon which the debt (or liability) is founded is attached hereto (or is lost or destroyed, as set forth in the affidavit attached hereto).

8. [If the debt is founded upon an open account.] That the debt was [or will become] due on June 23, 1970 [or that the debt or liability is due on June 23, 1970]; that no note or other negotiable instrument has been received for such account or any part thereof [or that no note or other negotiable instrument has been received for such account or any part thereof]; and that no judgment has been rendered thereon, except [or that no judgment has been rendered thereon, except] None.

Dated at Miami, Florida

this 22<sup>nd</sup> day of December, 1970.  
*[Signature]*  
Attorney for Creditor.

PENALTY FOR PRESENTING FRAUDULENT CLAIM - Fine of not more than \$5,000 or imprisonment for not more than five years or both - Title 18, U.S.C., §152.

CERTIFICATE OF CREDITOR signed and filed this proof of claim (to Referee in Bankruptcy)

*[Signature]*  
William J. Russell  
Referee in Bankruptcy  
U.S. District Court  
Eastern District of New York

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

Plaintiff,

-against-

74 Civ. 175  
(Weinstein, J.)

NATIONAL BANK OF NORTH AMERICA,

Defendant.

-----X

DEFENDANT'S RESPONSE TO PLAINTIFF'S  
RULE 9g STATEMENT

Each response made herein refers to the specific paragraph in plaintiff's Rule 9g statement.

1. Admitted.
2. Denies knowledge or information sufficient to form a belief.
3. Admitted.
4. Denies knowledge or information sufficient to form a belief.
5. Denies knowledge or information sufficient to form a belief.
6. Admitted.
7. Admitted.
8. Admitted.

9. Admitted.

10. Defendant admits that the assignment of rents as such was not filed for recordation. Defendant contends that such filing was not required and, in any event, the recording provisions were complied with since reference to the assignment is contained in the chattel mortgage, a recorded conveyance.

11. Admitted.

12. Admitted.

13. Admitted.

14. Defendant acknowledges receiving payments set forth but contends that said payments were received on account of and in reduction of Leasing's mortgage debt to plaintiff.

15. Admitted.

16. Admitted.

17. Denies knowledge or information sufficient to form a belief.

18. Denies knowledge or information sufficient to form a belief.

Dated: New York, New York  
June 5, 1974

COLE & DEITZ  
Attorneys for Defendant  
Office & P.O. Address  
40 Wall Street  
New York, New York 10005

By 

A Member of the Firm

DEFENDANT'S EXHIBIT A IN EVIDENCE-STIPULATION BETWEEN  
PLAINTIFF AND DEFENDANT DATED NOVEMBER 12, 1973

S T I P U L A T I O N

WHEREAS:

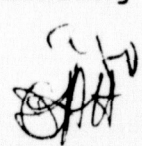
1. On or about April 11, 1969, Leasing Consultants Incorporated ("Leasing"), as lessor, and The Grant Co. ("Grant"), as lessee, executed an aircraft lease, number 1293, covering a certain 1965 North American Saber Liner, Registration Number N299LR ("Saber Liner"). The lease term was ninety-six (96) months, expiring in April, 1977.

2. It is contended that on or about April 11, 1969, as part of the foregoing transaction, Leasing executed a written "option to purchase" in favor of Grant, permitting Grant to purchase the Saber Liner at the terminal date of the lease for \$79,500.

3. On or about March 13, 1970 National Bank of North America ("Bank") extended a loan to Leasing in the principal sum of \$500,000.00, evidenced by a note. Leasing gave Bank a chattel mortgage covering the Saber Liner and its engines and an assignment of the aircraft lease, both as collateral security for the loan.

4. In a letter to Bank dated February 27, 1970, Grant agreed to make all further payments under the aircraft lease to Leasing c/o Bank.

5. On August 18, 1970, Leasing filed a petition for arrangement under Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York.





Leasing was subsequently adjudicated a bankrupt by order dated October 16, 1970. George Feldman ("Trustee") thereafter qualified as Leasing's trustee in bankruptcy.

6. Bank has been receiving the monthly payments from Grant and has been applying such payments against interest and principal due and payable pursuant to the note.

7. As of November 1, 1973 the outstanding balance on the note was \$173,099.00.

8. The Trustee disputes the validity of Bank's security.

9. Bank claims the chattel mortgage and the assignment of the aircraft lease are valid against the trustee.

10. Grant has offered to purchase the Saber Liner by prepaying its obligations under the aircraft lease at a 12% discount and prepaying the purchase option at a 7.5% discount. The tentative purchase price is \$433,705.58.

11. The Bank and Trustee agree that a sale of the Saber Liner to Grant is desirable although Bank does not agree that said sale represents a prepayment of Grant's obligation under the aircraft lease and purported purchase option.

12. The dispute between Bank and the Trustee is in the process of discussion between their respective counsel. To preserve the status quo, Bank has agreed to toll the statute of limitations during the course of such discussions.



13. In order to deliver clear title to the Saber Liner to Grant the Trustee must execute a bill of sale in favor of Grant and Bank must execute a release of its chattel mortgage on the Saber Liner and engines; alternatively, the Trustee could obtain an order authorizing the sale of the Saber Liner to Grant free and clear of Bank's contested lien.

THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Bank and the Trustee agree as follows:

A. Bank will release its chattel mortgage on the Saber Liner and engines.

B. Upon receiving authorization therefor from the Bankruptcy Court, the Trustee will execute a bill of sale covering the Saber Liner in favor of Grant.

C. The Trustee will hold the entire proceeds of the sale of the Saber Liner to Grant and shall divide said proceeds into two parts; the first equal to the principal balance due Bank on the note, plus interest accrued as of November 13, 1973, amounting in all to \$160,473.44, and the second consisting of the balance. The Trustee shall deposit the first part in an interest bearing account at Bank with its disposition subject to court order or further stipulation of the parties. The second part shall be deposited in the general funds of the estate.

D. This stipulation shall be totally without prejudice to the respective rights of Bank and the Trustee and



1 TRANSCRIPT OF HEARING JUNE 28, 1974 WITH ORAL DECISION JA113  
OF WEINSTEIN, J.

2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 FELDMAN, :

6 Plaintiff, :

7 -against- : 74-C-175

8 NATIONAL BANK OF NORTH AMERICA, :

9 Defendant. :

10 -----X

11

12 United States Courthouse  
13 Brooklyn, New York

14 June 28, 1974  
11:15 o'clock a.m.

15

16 B e f o r e :

17 HON. JACK B. WEINSTEIN,

18 U.S.D.J.

19

20

21

22

23

24

25

GENE RUDOLPH  
OFFICIAL COURT REPORTER



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**and**  
**HOMER KRIPKE, ESQ., of Counsel**

\* \* \*

1  
2 THE CLERK: Feldman against the  
3 National Bank of North America.

4 THE COURT: I have heard very extensive  
5 argument in this case for approximately one  
6 hour and extensive reference to the documents.  
7 A critical document in the case, which is not  
8 among the moving papers, is the stipulation  
9 dated November 12, 1973.

10 This will be converted into a hearing  
11 for the purpose of receiving this stipulation  
12 in evidence.

13 THE CLERK: Defendant's Exhibit A in  
14 evidence.

15 (So marked.)

16 MR. ZIMMERMAN: Your Honor, there is one  
17 slight problem at this point. We circulated  
18 between ourselves numerous stipulations that  
19 varied in terms. I am not sure that this is  
20 the stipulation we have finally agreed upon.

21 As I note, I do not see our signature  
22 on that particular document. I do not have the  
23 stipulation with me today that I have in my  
24 files.

25 THE COURT: Swear counsel, please.



1  
2 MR. D'AURIA: Your Honor, what I would  
3 prefer to do is we could double-check.

4 THE COURT: No.

5 (Anthony J. D'Auria duly sworn by  
6 Clerk of Court.)

7 THE COURT: Look at Exhibit A and  
8 identify it, please.

9 MR. D'AURIA: The best of my recollection,  
10 if your Honor please, this is the true stipulation  
11 entered into on or about December 12, 1973,  
12 between counsel for the bank and counsel for the  
13 trustee.

14 It may well be, Judge, that - - this  
15 stipulation is not signed. It may well be one  
16 with certain - - but be another one, but the  
17 points that we are relying on have not been  
18 changed in any respect. My recollection is that  
19 this is the stipulation.

20 THE COURT: Do you want to cross-examine  
21 the witness?

22 MR. ZIMMERMAN: Mr. D'Auria, do you have  
23 a signed, fully executed copy of this stipulation  
24 in your record?

25 MR. D'AURIA: I believe I do. I have a

1  
2 copy signed but not with me today.

3 MR. ZIMMERMAN: Do you have a copy  
4 of the order of the bankruptcy judge?

5 MR. D'AURIA: Not with me today.

6 MR. ZIMMERMAN: Permitting the sale?

7 MR. D'AURIA: Not with me today, but  
8 annexed to that order, as you know, Mr. Zimmerman,  
9 is the stipulation you and I entered into.

10 THE COURT: Is that a record in this court?

11 MR. ZIMMERMAN: It is a record in this  
12 court, though in Westbury.

13 THE COURT: The court will take judicial  
14 notice of its own records.

15 MR. ZIMMERMAN: Okay. Could we then have  
16 this taken out of evidence?

17 THE COURT: No, it's in evidence, subject,  
18 however, to the comparison of the official  
19 records in the Bankruptcy Court, and the power  
20 of either attorney to substitute a copy.

21 MR. D'AURIA: Thank you.

22 THE COURT: However, I will accept it.

23 MR. D'AURIA: The point I was - -

24 MR. ZIMMERMAN: May I finish my cross-  
25 examination?

1  
2 MR. D'AURIA: Sorry.

3 MR. ZIMMERMAN: Mr. D'Auria, was the  
4 National Bank of North America in fact served  
5 with a summons and complaint prior to the date  
6 of this stipulation, seeking a sale of the  
7 Grant airplane free and clear of the bank's  
8 contested lien?

9 MR. D'AURIA: I remember, Mr. Zimmerman,  
10 and since you are going to request relief, and  
11 my experience in bankruptcy courts have been  
12 that such relief is granted. It was under those  
13 circumstances that you and I entered into  
14 discussion producing our agreement.

15 Judge, I couldn't find the provision  
16 before as to what should happen to the bank's  
17 claims, and the specific - - the stipulation  
18 specifically says that the bank reserves the  
19 right to contend that the entire proceeds of  
20 the sale of the Sabre Liner including that  
21 portion of purchase price received by the  
22 trustee is subject to the bank's chattel mortgage.  
23 We reserve the right to contest any characteriza-  
24 tion of the proceeds of the sale of the aircraft  
25 agreed upon by Grant and trustee, and we reserve



1  
2 the right to contend that the bank has a  
3 fair - - has the right to the fair market  
4 value of the Sabre Liner as of the terminal  
5 date of the lease.

6 So I think, your Honor, it's really a  
7 red herring.

8 THE COURT: I have it before me.

9 MR. D'AURIA: One point I was going to  
10 make - -

11 THE COURT: No. I don't want any points.  
12 I just want to get any further evidence that  
13 you want to submit or that counsel wants to  
14 submit, but I think we spent enough time on the  
15 oral argument.

16 MR. D'AURIA: Yes, sir.

17 Two other things, if your Honor please.

18 Counsel referred to a case before  
19 Judge Bowman.

20 THE COURT: I do not want to hear any - -

21 MR. D'AURIA: No. I would like to put  
22 the papers in the brief because I think it's  
23 relevant, what he bases his opinion on, and the  
24 mortgage there in suit, the different mortgage.  
25 But if your Honor please, I just - -

1  
2 THE COURT: I don't think we need to  
3 clutter up the record with proceedings from  
4 other courts.

5 MR. D'AURIA: I made that representation  
6 in my initial brief and I just wanted to bring  
7 it to your Honor's attention. We do have those  
8 papers, if it's required.

9 THE COURT: Is there any evidence you wish  
10 to submit?

11 MR. D'AURIA: No further documents, no,  
12 Judge.

13 THE COURT: Does the plaintiff have any  
14 evidence that it wishes to submit or a supplement  
15 to the record?

16 MR. ZIMMERMAN: Your Honor, I ask the  
17 court if you would care to receive into evidence  
18 a transcript of the record of conveyances of  
19 the Federal Aviation Administration.

20 THE COURT: Do you have it here?

21 MR. ZIMMERMAN: Unfortunately, I don't.

22 THE COURT: You are free to supplement  
23 the record.

24 What do you think that will show that  
25 you don't already know?



1  
2 MR. ZIMMERMAN: The most it would do,  
3 your Honor, is familiarize the court with the  
4 method of record-keeping using a certified  
5 copy. If your Honor doesn't think it's relevant,  
6 I won't submit it.

7 THE COURT: I do not see any point. It  
8 is stipulated and agreed that the chattel  
9 mortgage, which is part of the record before  
10 the court, was physically filed, properly filed.

11 This is an interesting case and I would  
12 very much enjoy writing on it, but in view of  
13 the heavy criminal calendar which we will have  
14 over the summer, it is impossible to do so.

15 Since the case is entirely based on  
16 documentary evidence, summary judgment is proper  
17 and appropriate here.

18 The dispute is based upon a number of  
19 contentions by the trustee. The court considers  
20 the critical one to be that relating to the  
21 chattel mortgage dated March 13, 1970. The  
22 chattel mortgage covers a plane purchased for  
23 some \$800,000, approximately ten months before  
24 the date of the mortgage.

25 The loan on the plane was \$500,000,

1  
2 secured by a mortgage and other instruments.  
3 The mortgage was the main instrument for  
4 providing security.

5 The critical claim of the trustee, so  
6 far as summary judgment is concerned, is that  
7 the mortgage covered only a reversionary  
8 interest worth approximately \$70,000.

9 In view of these specific terms of the  
10 chattel mortgage, including Schedule 1 attached  
11 to the mortgage, and the amount loaned, which  
12 was approximately the value of the plane after  
13 ten months of depreciation, this claim of the  
14 trustee is untenable.

15 It was the intention of all the parties  
16 to provide a full chattel mortgage on the full  
17 chattel. The trustee concedes that the chattel  
18 mortgage was valid and was properly filed with  
19 the FAA.

20 Another contention of the trustee is  
21 that the assignment of the lease should have  
22 been filed with the FAA. The assignment of  
23 lease is extensively referred to in the chattel  
24 mortgage. Any possible creditor would have  
25 been given ample notice that it would find

properly filed in New York, as there was properly filed in New York, reference to the other papers in the case.

It is not necessary to determine on this motion whether the federal statute requires the assignment to be filed with the FAA. Under the circumstances here considering all of the aspects of the case, there was sufficient filing of notice, and nothing really turns on the question of the assignment of lease, since the chattel mortgage is the primary document relied upon.

The treatment of the claims over a period of more than two years, beginning in approximately November, 1970, as well as the stipulation dated November 12, 1973, marked as Defendant's Exhibit A, indicate that reasonably construed the documents in the case require that the cash assets of the sale of the plane be treated as if the cash were the plane and that this action, insofar as it involves counter-claims by National Bank, be treated as if it were a foreclosure action against the plane, i.e., the cash.



1  
2 Upon foreclosure, the bank would  
3 have been entitled to the plane and is,  
4 therefore, entitled to so much of the cash  
5 as is owed to it under the chattel mortgage.

6 The overly technical construction  
7 proposed by the trustee would make reasonable  
8 stipulations and reliances by banks and  
9 trustees in connection with complex financial  
10 transactions so difficult as to prevent  
11 reasonable agreements that were and would be  
12 to the benefit of both the bankrupt's creditors,  
13 who were unsecured, and those who are secured.

14 Equity, as well as law, require that  
15 the bank's claims should be recognized and that  
16 summary judgment in favor of the bank be granted.

17 Are there any further findings of fact  
18 you require?

19 MR. D'AURIA: I don't think so, Judge.

20 MR. ZIMMERMAN: Yes, your Honor. Just  
21 as clarification.

22 Does your Honor find that the trustee  
23 had actual notice of the assignment?

24 THE COURT: He did. It is not necessary  
25 for my decision, but he had actual notice.

1  
2 MR. ZIMMERMAN: Okay.

3 Does your Honor find that the bank  
4 was unaware of the lease between Leasing  
5 Consultants and Grant at the time the mortgage  
6 was executed?

7 THE COURT: Well, they must have been  
8 aware there was an assignment of that lease.

9 MR. ZIMMERMAN: Then your Honor would  
10 make a finding of fact that the bank was aware  
11 of the - -

12 THE COURT: They were aware of it and  
13 in fact filed the assignment in New York and  
14 the assignment is referred to throughout in  
15 the chattel mortgage.

16 I have already found that any reasonable  
17 creditor would have been advised by the filing  
18 of the chattel mortgage of the lease and of its  
19 filing in New York.

20 MR. ZIMMERMAN: Does your Honor find  
21 that the assignment was filed in New York?

22 THE COURT: Yes.

23 MR. ZIMMERMAN: But your Honor, there is  
24 nothing in the record to indicate that the  
25 assignment was filed in New York. There are



1  
2 UCC 1 financing statements.

3 THE COURT: Are you contesting that?

4 MR. ZIMMERMAN: If it's relevant,  
5 your Honor, I will contest it.

6 THE COURT: As a matter of fact, is  
7 that a contestable fact?

8 MR. D'AURIA: Never been contested  
9 before, Judge.

10 MR. ZIMMERMAN: Your Honor, there is no  
11 contested fact that UCC 1 financing statements  
12 were filed in Albany and in Queens County.

13 THE COURT: Did you file the assignment  
14 of lease?

15 MR. D'AURIA: Not the document assignment  
16 of lease. We filed the UCC 1's.

17 THE COURT: Is that in your moving papers?

18 MR. D'AURIA: Yes, it is, Judge.

19 THE COURT: Let me see it, please.

20 MR. D'AURIA: Judge, I think it was an  
21 uncontested statement. Now that I think about  
22 it, in my 9C statement - - and the trustee has  
23 not denied that.

24 THE COURT: Let me see the documents.

25 MR. D'AURIA: I don't think I have the

documents with me, Judge.

THE COURT: You do not?

MR. D'AURIA: No.

MR. ZIMMERMAN: Your Honor, as a question of fact, I know for a fact that they were filed, in Queens and Albany. I will agree to that.

However, at the time the mortgage was executed, Leasing Consultants was located in Nassau County. If filing - - the court is relying on filing as a question of law under the code, the filing is inadequate.

MR. D'AURIA: But Judge, that's never been an issue in this case because we had possession of the lease.

MR. ZIMMERMAN: Your Honor is looking at that as a question of notice, on the perfection issue.

THE COURT: I do not have to decide that because, as I say, and I said in my oral opinion, that chattel mortgage is the primary instrument and that has been properly filed, and it is the chattel mortgage that we are now in effect foreclosing.



1  
2 MR. ZIMMERMAN: Does your Honor find  
3 that the assignment, as a matter of law, that  
4 the assignment of the lease is invalid against  
5 the trustee?

6 MR. D'AURIA: Judge, can I come to your  
7 defense on this cross-examination, please?

8 I think your Honor hit it on the head.  
9 That's not necessary for the opinion.

10 MR. ZIMMERMAN: What I am trying to do - -

11 THE COURT: It is not a cross-examination.  
12 I am trying to assist counsel so that we won't  
13 have to have this case back.

14 MR. ZIMMERMAN: Exactly, your Honor.

15 The Chase case determined, as a matter  
16 of law, that the assignment of the lease was a  
17 recordable conveyance.

18 That won't affect your Honor's decision  
19 in that you determined that the chattel mortgage  
20 gives the bank the right to the proceeds of the  
21 sale, to satisfy its secured obligation.

22 However, on appeal, if I could establish  
23 otherwise, and there is no ruling on the other  
24 point, it may have to be returned to this court.

25 THE COURT: All the information I have

1  
2 indicates that the assignment was a valid  
3 assignment.

4 MR. ZIMMERMAN: But - -

5 THE COURT: And that the lease was a  
6 valid lease.

7 MR. ZIMMERMAN: I am talking about in  
8 terms of the recording statute.

9 THE COURT: I haven't got sufficient  
10 information. If you are now contesting it,  
11 you haven't contested it up to this point.

12 MR. ZIMMERMAN: Your Honor, that is the  
13 entire basis of the complaint.

14 THE COURT: That the lease was not  
15 properly recorded?

16 MR. ZIMMERMAN: That the lease and the  
17 assignment of the lease were not properly  
18 recorded.

19 Now, the lease - - the validity of the  
20 lease - -

21 THE COURT: In the FAA?

22 MR. ZIMMERMAN: The lease doesn't matter.

23 THE COURT: In the FAA? Your contention  
24 is it should have been recorded with the FAA?

25 MR. ZIMMERMAN: Right.



1  
2 THE COURT: It wasn't recorded with  
3 the FAA?

4 MR. ZIMMERMAN: That is true.

5 THE COURT: And I haven't determined,  
6 because it is not necessary for my decision,  
7 whether the federal statutes require that it be  
8 recorded.

9 I do say that anybody who wanted to  
10 make any loans or grant any credit would have  
11 been on notice through the chattel mortgage of  
12 everything that he had to know and could have  
13 easily traced the matter. I do not have to go  
14 beyond that and I do not intend to.

15 This was not a conditional sale. It  
16 was a lease.

17 MR. ZIMMERMAN: Your Honor, does your  
18 Honor make a finding of fact that this was not  
19 a conditional sale?

20 THE COURT: That is right, by your own  
21 statement, the reversion was worth some \$70,000.

22 MR. ZIMMERMAN: Your Honor, I must submit  
23 that based upon the papers and the Rule 9G  
24 statement submitted here - -

25 THE COURT: Didn't you just tell me it



1  
2 was worth about \$70,000?

3 MR. ZIMMERMAN: Your Honor, the  
4 reversion, if there is a reversion, would be  
5 worth - - what I've done is keyed it into a  
6 purchase option.

7 Now, under the Federal Aviation Act  
8 definition of the conditional sale contract, a  
9 lease with a purchase option is a conditional  
10 sale contract.

11 Now, we have argued in this case in  
12 the alternative. Now, if it is a conditional  
13 sale contract, and that is our position, then  
14 the assignment of the conditional sale contract  
15 under the federal regulations is a recordable  
16 instrument. Failure to record it would make it  
17 invalid.

18 Okay. Now, we are not conceding that  
19 it is not a conditional sale. We are not  
20 conceding that it is a lease.

21 We have argued that if the court finds  
22 that it is a lease, we have an argument that  
23 fits that situation.

24 So I think a finding of fact in that  
25 area is a necessary finding in this case.

1  
2 THE COURT: I think I have sufficiently  
3 found all the facts that are required.

4 Anything further?

5 MR. D'AURIA: Nothing further.

6 Thank you, your Honor.

7 MR. ZIMMERMAN: Your Honor, I - -

8 THE COURT: Submit an order.

9 MR. D'AURIA: Yes, I will.

10 MR. ZIMMERMAN: May I just have a  
11 couple of minutes more? This is a very, very  
12 complex case.

13 THE COURT: Take all the time you want.  
14 I have given you an hour and a half and you  
15 can take as much additional time as you would  
16 like.

17 MR. ZIMMERMAN: This case has already  
18 consumed hundreds of hours in terms of preparation  
19 and I would like to have a sufficient record  
20 before - -

21 THE COURT: Take all the time you want.

22 MR. ZIMMERMAN: Does your Honor find  
23 that the description contained in the chattel  
24 mortgage covers, as collateral, the Grant lease  
25 and/or the proceeds of the Grant lease?



1  
2 THE COURT: I make no such finding.

3 I do not think it necessary.

4 MR. ZIMMERMAN: Does your Honor make - -

5 THE COURT: I found that the chattel  
6 mortgage covers the entire plane and that the  
7 cash assets stand in place of the entire plane,  
as the matter now stands.

9 MR. ZIMMERMAN: Does your Honor find  
10 that the trustee is estopped from taking the  
11 position that the bank has failed to foreclose  
12 on its chattel mortgage?

13 THE COURT: Yes.

14 MR. ZIMMERMAN: Would your Honor - -

15 THE COURT: I interpret the stipulation  
16 and the treatment of this over a period of more  
17 than two years as indicating that the trustee  
18 acknowledged the validity of the chattel mortgage.

19 MR. ZIMMERMAN: The validity - -

20 THE COURT: And that the trustee intended  
21 that the cash stand in place of the plane.

22 MR. ZIMMERMAN: Your Honor, may I direct  
23 the court, respectfully, to the fact, this  
24 stipulation is a two-way stipulation. It was  
25 not intended to give ground by either the trustee

1  
2 or the bank. It was not intended to concede  
3 anything to the bank, and it was not intended  
4 as an admission that the bank was entitled to  
5 the proceeds of all or any part of the sale of  
6 the airplane.

7 THE COURT: I understand that. Your  
8 claim is that the bank was not entitled to  
9 anything, so far as the plane was concerned,  
10 and could not foreclose against the plane itself.

11 MR. ZIMMERMAN: Your Honor, that's - -  
12 we didn't have any position on that because the  
13 bank never foreclosed.

14 THE COURT: They did not foreclose  
15 because you and the bank agreed to sell the  
16 asset immediately on good terms, without fore-  
17 closing, which would have caused an extensive  
18 delay and would have made it possible - -

19 MR. ZIMMERMAN: That's not true.

20 THE COURT: - - for the asset to have  
21 wasted.

22 MR. ZIMMERMAN: Your Honor, that is not  
23 true.

24 THE COURT: That is the way I read the  
25 documents. It is the only sensible way of



1  
2 reading this whole transaction.

3 MR. ZIMMERMAN: Your Honor - -

4 THE COURT: I think any other way of  
5 reading it would make it impossible for a  
6 bank to work with a trustee. They would have  
7 to - -

8 MR. ZIMMERMAN: But your Honor, that's - -

9 THE COURT: They would have to continuously  
10 enforce every right to the nth degree, and the  
11 result would be an enormous loss to all of the  
12 financial community.

13 MR. ZIMMERMAN: But your Honor, this is  
14 not - - this stipulation was executed because - -  
15 mainly because the Grant Company was becoming  
16 late in their monthly payments, and because  
17 both the bank and the trustee felt that it was  
18 much safer for both parties' dispute over a  
19 fund of cash rather than an obligation of a  
20 company, which was outside of the jurisdiction  
21 - - outside of this jurisdiction. And an air-  
22 plane, which is a movable thing, which was not  
23 depreciating, which was not wasting, which, if  
24 anything, in today's airplane market, was getting  
25 more valuable.



1  
2 It was an aid in this litigation,  
3 and to take worries away from us, that the  
4 stipulation was entered into.

5 THE COURT: There is no question that  
6 the cash was to stand in place of the plane.

7 MR. ZIMMERMAN: The cash was - - was  
8 not to stand in place of the plane, your Honor,  
9 because the plane was not sold. The plane was  
10 not sold by the stipulation.

11 As stated in my affidavit, backed up  
12 by exhibits, such as the offer of purchase by  
13 Grant, Grant did not purchase the plane by  
14 just coming in and purchasing the plane. There  
15 were no competitive bids for the plane, which  
16 would have been necessary under the Bankruptcy  
17 Rules, if that had been done.

18 What had happened was that Grant said  
19 "We wish to prepay our obligations under this  
20 conditional sale contract and purchase option,"  
21 and they did.

22 Now, this stipulation being without  
23 prejudice cannot alter the fact of what the  
24 sale was.

25 Certainly if part of the purchase price

1  
2 is relevant to a reversion, that's fine,  
3 and the court has the power and should  
4 determine what the value of that reversion was.

5 But the plane was not sold. The chattel  
6 paper was collected.

7 Now, that's - - but that doesn't - -  
8 unless your Honor - -

9 THE COURT: If the chattel paper was  
10 collected, they are entitled to their claim  
11 against the chattel. If they were collecting  
12 their monthly - - were these monthly payments?  
13 They were collecting their monthly payments  
14 and you collected all the monthly payments in  
15 advance, then they were surely entitled to it.

16 I do not understand your position.

17 MR. ZIMMERMAN: Your Honor, the record  
18 does not show that they were collecting the  
19 monthly payments. What the record does show - -  
20 and it's a fine point, perhaps - - that under  
21 the agreement the lessee made its payments to  
22 Leasing Consultants, the bankrupt, throughout  
23 the period, even after bankruptcy. The payments  
24 were made in care of the bank.

25 The bank deposited the payment into a



1  
2 bank account in the name of Leasing Consultants,  
3 when it came in, on the 20th day of each month,  
4 charged that bank account the amount of the  
5 lease payment.

6 THE COURT: Over - - more than a two-  
7 year period.

8 MR. ZIMMERMAN: What?

9 THE COURT: Over a more than two-year  
10 period.

11 MR. ZIMMERMAN: Since March of 1970.

12 THE COURT: What is your claim? They  
13 were not entitled to take that?

14 MR. ZIMMERMAN: What I am saying, your  
15 Honor, is that they did this on - - after  
16 bankruptcy.

17 THE COURT: With your consent.

18 MR. ZIMMERMAN: Not with our - - we did  
19 not object, but they're not damaged by that,  
20 your Honor.

21 THE COURT: I know, but you have treated  
22 this all along as if they were secured creditors  
23 entitled to these payments.

24 MR. ZIMMERMAN: Your Honor, if - - if  
25 what your Honor is shaping here is a defense of

1  
2 laches in pursuing a remedy in declaring  
3 their security interest invalid, you are saying  
4 that the trustee's course of conduct is such  
5 by not asserting his superior right to this  
6 property, that he can no longer do that.

7 THE COURT: I think it was a perfectly  
8 sensible interpretation, and you did this in  
9 order to prevent them from foreclosing. They  
10 did not foreclose for over a two-year period.  
11 They have entered into this stipulation and  
12 allowed you to either sell or to accelerate the  
13 payments, either way you treat it.

14 You have taken full advantage of that  
15 and as a result gotten a very substantial  
16 amount of cash immediately that you otherwise  
17 would not have gotten.

18 MR. ZIMMERMAN: That's not true.

19 THE COURT: I do think, therefore, that  
20 there is a defense of laches here, but that is  
21 not the basis for my decision. I would make  
22 the finding, that there was laches, since you  
23 have asked for it, on the part of the trustee,  
24 and that there was extensive reliance here by  
25 the bank in the giving up of their right to



1  
2 foreclose over a substantial period.

3 Are there any other findings you wish  
4 me to make?

5 MR. ZIMMERMAN: Yes, your Honor, I think  
6 there are, but I have to run through this  
7 (indicating) just to - -

8 THE COURT: I do not want anything that  
9 I have said to indicate that I believe that  
10 the trustee's position in taking this matter  
11 to court was justified or that the trustee is  
12 entitled to any fees for this kind of litigation.  
13 I leave that open for the bankruptcy proceeding,  
14 although I note for the record the very extensive  
15 litigation, much of which I think was unjustified,  
16 as I have already expressed in my opinion.

17 MR. ZIMMERMAN: I might point out, your  
18 Honor, that the same course of action has been  
19 successful in two actions against other banks.

20 Your Honor, going back to the notice  
21 issue, would your Honor detail as findings of  
22 fact the - - what items gave the trustee in  
23 bankruptcy actual notice of the assignment?

24 THE COURT: I think the whole handling  
25 of this claim over this long period suggests

1  
2 that they had notice.

3 The court takes judicial notice of  
4 the fact that the trustee and his counsel's  
5 extremely competent handling of these litigations  
6 suggests that they would have made a full  
7 investigation.

8 MR. ZIMMERMAN: Your Honor, might I  
9 point out - -

10 THE COURT: All of these matters were  
11 public records.

12 MR. ZIMMERMAN: - - that Section 70(c) is  
13 applicable as of the date of the bankruptcy and  
14 the issue of notice is addressed to the date of  
15 bankruptcy. So that any actions or any knowledge  
16 coming to the trustee or his counsel subsequent  
17 to bankruptcy should not be considered.

18 THE COURT: All these were matters of  
19 public record.

20 MR. ZIMMERMAN: All right, your Honor,  
21 I have no further requests of the court.

22 THE COURT: Thank you very much, gentlemen.

23 MR. D'AURIA: Thank you very much, your  
24 Honor.

25 THE COURT: Very interesting argument.

1  
2 MR. ZIMMERMAN: Your Honor request a  
3 settlement of an order on notice?

4 THE COURT: Yes. How much time do you  
5 want?

6 MR. D'AURIA: Five days, Judge?

7 THE COURT: Five days. How much time  
8 do you want for counter-order?

9 MR. D'AURIA: A short week next week.

10 THE COURT: Why don't you try to agree  
11 on it? You must be able to agree on something - -

12 MR. D'AURIA: I'm sure we can, Judge.

13 MR. ZIMMERMAN: A week, your Honor?

14 THE COURT: - - and make it stick.

15 MR. ZIMMERMAN: A week, your Honor?

16 THE COURT: All right. One week.

17 MR. D'AURIA: Maybe we ought to have  
18 a transcript.

19 MR. ZIMMERMAN: Yes.

20 \* \* \*

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JA143

30-A

EXHIBITS

DEFENDANT'S

In Evidence

A

Stipulation dated Nov. 12, 1973

3

\* \* \*



LETTER FROM DANIEL A. ZIMMERMAN TO DISTRICT JUDGE  
WEINSTEIN  
HAHN, HESSEN, MARGOLIS & RYAN  
ATTORNEYS

JAI44

J. JACOB HAHN  
J. J. L. HESSEN  
HARRY A. MARGOLIS  
FRANCIS J. RYAN, JR.  
GEORGE A. HAHN  
LAWRENCE G. NOVICK  
DAVID M. LEVITAN  
MELVIN BEINART  
ROBERT J. CLERKIN  
HERBERT L. ASH  
MICHAEL S. LANDES

350 FIFTH AVENUE  
NEW YORK, N.Y. 10001

(212) PE 6-1000  
CABLE: HAGOLAW

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.

★ JUL 1, 1974 ★

JULIUS J. ABESON  
HARRY R. VARON  
MARSHALL C. BERGER  
WILLIAM R. FABRIZIO  
DANIEL A. ZIMMERMAN  
STEPHEN L. PLUTZER  
LESLIE N. BUCH  
JANE S. SOLOMON  
ROGER M. EICHEL  
RICHARD H. AJDEKMAN

Honorable Jack B. Weinstein  
District Judge  
United States Court House  
225 Cadman Plaza East  
Brooklyn, New York 11201

TIME A.M.

Re: Feldman v. National Bank of North America, 74 175

Dear Judge Weinstein:

I would like to apologize to the court and adversary counsel if I gave the impression (as adversary counsel has advised me I did) that I was repudiating the stipulation of November 12, 1973 marked in evidence or subjecting it to a hyper technical interpretation. This is not the case. Your Honor asked me if under the stipulation the sales proceeds were substituted for the airplane and I answered "no". I had no opportunity to elucidate at that time since Mr. D'Auria was arguing his case, and failed to clarify the response later on. I would like to now state, for the record, the trustee's position regarding the stipulation.

The stipulation must be understood in light of its background. When I informed Mr. D'Auria of the trustee's claim in March of 1973, he requested an opportunity to dissuade us from commencing suit. Memoranda regarding the relative legal positions of the parties were interchanged as a courtesy to Mr. D'Auria whose firm had failed to file the assignment. In the context of these exchanges many legal theories and various probability lines were discussed in regard to possible court determinations of the various issues.

When the lessee, Grant Co., offered to prepay its lease obligations, or in neutral terms, to advance monies so as to obtain the interests of the trustee and bank, so that Grant could resell the plane, we attempted to prepare a stipulation. The first drafts attempted to take into account all the possible

Honorable Jack B. Weinstein  
District Judge  
July 1, 1974  
Page Two

results of a court decision as based on the theories already advanced by the parties. We failed to reach total agreement. The hangup was over the value to be assigned to the lease reversion in the event that the court determined that the lease was a true lease and that the bank's chattel mortgage gave it a perfected security interest only in the reversion. There was no stipulation.

My office then prepared a complaint pursuant to Rule 701 of the Bankruptcy Rules of Procedure seeking to sell the Grant lease and aircraft free and clear of the liens, if any, of the bank, with such liens, if any, to attach to the proceeds of the sale. Faced with this adversary proceeding the bank agreed to stipulate to essentially what the trustee would have gotten if his complaint proved successful. The stipulation, prepared by Mr. D'Auria, was expressly intended to contain no characterization as to what the proceeds represented. In view of the adverse contentions, the proceeds from Grant, as far as the stipulation was concerned, represented neither the proceeds of the sale of the aircraft nor the proceeds of the chattel paper nor any combination thereof. Both parties were free to have the court characterize it in any way they could. Paragraph 11 of the prologue of the stipulation is instructive:

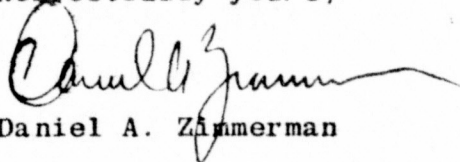
"11. The Bank and the Trustee agree that a sale of the Saber Liner is desirable although Bank does not agree that said sale represents a prepayment of Grant's obligations under the aircraft lease and purported option."

In light of this background, when I stated to the court that the sale proceeds were not substituted for the airplane, I should have said that the proceeds were not necessarily substituted for the plane. That is the bank's position. It is the trustee's position that they are substituted for the remaining chattel paper obligations. The stipulation takes no position on that issue. These matters were left to contentions of the parties to be made to the court. The court has to decide the proper characterization.

Honorable Jack B. Weinstein  
District Judge  
July 1, 1974  
Page Three

I do not want the court to believe that I do not honor my stipulations, I do. My objection in court was to a characterization of the effect of the stipulation that I then felt unwarranted. After calm reflection, I believe that I was correct although I regret that I was not more articulate at the time.

Respectfully yours,



Daniel A. Zimmerman

DAZ/vtw

cc: Cole & Deitz, Esqs.  
Attention: Anthony J. D'Auria, Esq.  
Homer Kripke, Esq.



Extra copy

JA147

MOTION FOR REARGUMENT (PLAINTIFF) (Filed July 3, 1974)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

74 Civ. 175  
(Weinstein, J.)

Plaintiff,

-against-

NATIONAL BANK OF NORTH AMERICA,

Defendant.  
-----X

MOTION FOR REARGUMENT

Plaintiff moves the court for reargument in regard to its in court decision on cross-motions for summary judgment in the above entitled action on June 28, 1974.

Point 1

The court's decision of June 28, 1974 did not deal with plaintiff's first cause of action. The complaint contains two causes of action. The first cause of action seeks to recover \$440,562.50 in lease payments collected



by defendant subsequent to August 18 1970. The second cause of action seeks a declaratory judgment regarding a portion of the proceeds of a sale pursuant to stipulation dated November 12, 1973.

The court's oral decision stated:

"...the documents in the case require that the cash assets of the sale of the plane be treated as if the cash were the plane and that this action, insofar as it involves counterclaims by National Bank, be treated as if it were a foreclosure action against the plane, i.e. cash.

"Upon foreclosure, the bank would have been entitled to the plane and is, therefore, entitled to so much of the cash as is owed it under the chattel mortgage." Transcript at 11, 12.

The court's decision clearly gives Chase judgment on a counterclaim for the proceeds of the sale pursuant to stipulation. The sale proceeds were \$433,705.58 including the \$160,473.44 held specially by the plaintiff. The court's decision thus disposes of plaintiff's second cause of action but leaves the first cause of action undecided.

If the court follows Judge Bauman's decision in Feldman v. Chase Manhattan Bank, N.A., 368 F. Supp. 1327 (S.D.N.Y. 1974) and grants plaintiff judgment on its first

cause of action for \$440,562.50 plus interest and gives defendant judgment on a counter claim for \$433,705.58 plus interest, it will result in a net recovery for plaintiff of approximately \$167,330.36 plus some interest. \*

### Point II

The documents in the case do not provide that the cash proceeds of the sale be substituted for the plane. On November 12, 1973 plaintiff and defendant entered into a stipulation whereby and whereunder they agreed to transfer their respective interests in the Grant lease and Saber liner to Grant without prejudice to their respective rights. The court held that the proceeds of this transfer were allocable only to the Saber Liner under a theory of implied foreclosure.

However , it is uncontested that at the time of the sale to Grant, Grant had a subsisting contractual obligation to pay \$11,593.75 per month each month from October of 1973 through December of 1976. It is the Trustee's contention that this obligation was part of the chattel paper in regard \*

\*This recovery would include the \$160,473.44 held specially plus an additional \$ 7,000.00 from National.

to which National's security interest is invalid; and that this obligation was prepaid by Grant and represents the major portion, if not all, of the monies paid by Grant. The stipulation reserved to National only the right to contend that these monies were allocable to their chattel mortgage interest in the Saber Liner. The Trustee was free to contend that the monies represented chattel paper proceeds.

These contentions must be supported by facts. The trustee's contentions are supported by: (a) the offer of Grant; and (b) the absurdity of selling the plane for less than its fair market value; \* and (c) the illogic of waiving Grant's remaining lease obligation for no consideration. National's contention stands solely on the conclusory statement contained in paragraph 6 of the D'Auria affidavit. There is no documentary evidence to support it. Since in the absence of the transfer pursuant to stipulation, Grant was obligated to pay its lease obligations, and since the stipulation was without prejudice to the Trustee as well as to National, some allocation must be made to the chattel paper.

-----X  
\*

At the closing, Grant Company sold the Saber Liner to a third party for approximately \$560,000.00.



Point III

National's secured loan to Leasing was a chattel paper transaction. The court has ignored the significance of the aircraft lease/chattel paper and Leasing's "assignment" thereof to National. The court was in error in holding that the chattel mortgage was the main security device. Since National's loan to Leasing was to be paid off by Grant's lease payments, National's major reliance was on the "assignment" rather than the "mortgage."

A hypothetical shows the validity of this analysis. Leasing owns an aircraft and leases it to Grant. Leasing thereafter gives Bank A an assignment of the lease and Bank B a chattel mortgage on the airplane, both in return for substantial loans. Leasing defaults on the loans. What does the chattel mortgagee get on its foreclosure?

Plaintiff submits that the foreclosing mortgagee would get the lease reversion if the lease were a true lease and nothing if the lease were a security device. Bank A is entitled to the lease proceeds.

---

\*The lease is chattel paper under U.C.C. § 9-105(b) and Official Comment to U.C.C. § 9-308.



Point IV

Leasing could not mortgage property that it did not own.

When Leasing executed the chattel mortgage in favor of National on March 13, 1970, Leasing did not own the airplane.

Leasing had sold the airplane to Grant under a conditional bill

\*

of sale in April of 1969. Thus in March of 1970, Grant owned

the plane, not Leasing. See 14 C.F.R. §47.5(c); Smith v.

Joliet Airmotive, Inc., 35 Ill. App.2d 2, 181 N.E.2d 817

(1962); Bishop v. R.S. Evans East Point, Inc., 80 Ga. App.

384, 56 S.E.2d 134 (1949). Leasing retained only a security

interest in the plane. James Talcott, Inc. v. Franklin

National Bank, 194 N.E.2d 775 (Minn. 1972).

As observed by Professor Kripke in a non-adversary

role:

-----x

\*

The lease is a conditional sale contract as defined at 49 U.S.C. §1301(16) because based on the uncontradicted documentary evidence, Grant had an option to purchase the plane and the installment purchase price i.e. \$1,192,500.00 over eight years is substantially equivalent to the April, 1969 value of the plane, i.e. \$825,000.00, plus finance charges.

"In the typical case of assignment of a debt secured by a conditional sales contract... covering equipment: (1) the debt itself and its security constitute chattel paper...The assignment of the debt must be perfected by the rules relating to the assignment of chattel paper..." McKinney's (1972), Practice Commentary to U.C.C. §9-302, at 455.

Professor Kripke's observation is directly applicable at bar. Leasing assigned Grant's debt, which was secured by a conditional sales contract covering the airplane, to National. The assignment must be perfected, not the mortgage.

#### Conclusion

For the foregoing reasons, plaintiff's motion for reargument should be granted, any order or judgment entered in the interim should be vacated, and the matter should be set down for further hearing or marked submitted for a further ruling by the court.

New York, New York  
July 3, 1974

Hahn, Hessen, Margolis & Ryan  
Attorneys for Plaintiff

By: \_\_\_\_\_  
For the Firm

LETTER FROM ANTHONY J. D'AURIA TO DISTRICT JUDGE  
WEINSTEIN AND ENDORSED ORDER OF WEINSTEIN, D.J., DENYING  
COLE & DEITZ  
REARGUMENT

HERBERT J. DEITZ  
HERBERT DANNETT  
EDWARD L. LEVINE  
DONALD L. LAUFER  
PETER F. WEIR  
FREDERICK D. SCHROEDER  
EARL L. CROMAN  
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HAROLD M. COLE (1906-1972)  
LONG ISLAND OFFICE  
NATIONAL BANK OF NORTH AMERICA BLDG  
WEST HEMPSTEAD, N. Y.  
(516) 481-7970

July 8, 1974

**FILED**  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 10 1974 ★

By Hand

TIME A.M. ....  
P.M. ....

Honorable Justice Jack B. Weinstein  
United States District Court  
Eastern District of New York  
225 Cadman Plaza  
Brooklyn, New York

Re: Feldman v. National Bank of  
North America - 74 C 175  
Motion argued June 28, 1974

Honorable Sir:

I regret to have to burden your Honor with this letter which is necessitated by plaintiff's motion for re-argument of his cross-motion for summary judgment.

Plaintiff has made no showing that your Honor overlooked or misapprehended the facts or the law, or for some other reason mistakenly arrived at your decision. 2A Weinstein, Korn, Miller, New York Civil Practice ¶2221.03. Indeed, plaintiff's motion is nothing more than a re-hash of his prior arguments supported precisely by the same authorities.

Plaintiff's claim that your Honor did not deal with his first cause of action was specious. That cause of action sought to recover the approximate sum of \$440,000 collected by the Bank pursuant to its chattel mortgage. The second cause of action sought to recover the approximate sum of \$160,000, the balance due on that mortgage, and represented by the proceeds of the sale of the airplane, a sale conducted pursuant to the stipulation of the parties.

Honorable Justice Jack B. Weinstein  
July 8, 1974

The papers submitted by plaintiff and defendant in support of their respective motions recognized the obvious fact that a determination as to the validity, scope and extent of the Bank's mortgage would be dispositive of both causes of action asserted by the Trustee since the Bank's right to retain the monies collected and to recover the balance due on its loan was predicated on the same operative document.

Your Honor's decision found that it was "the intention of all of the parties to provide a full chattel mortgage on the full chattel" and that the Trustee's contention that the chattel mortgage attached only to the reversion was "untenable".

Since your Honor concluded that the Bank's mortgage entitled it to receive the payments in question, the Trustee is not entitled to recover on either of his causes of action and the Bank is entitled to judgment dismissing the complaint, which is precisely the relief sought in its moving papers.

Under these circumstances, it is respectfully requested that your Honor deny plaintiff's motion for re-argument.

**FILED**

IN CLERK'S OFFICE

U. S. DISTRICT COURT E.D. N.Y.

★ JUL 10 1974 ★

TIME A.M. ....

P.M. ....

AJD:sf

cc: Hahn, Hessen, Margolis  
& Ryan  
350 Fifth Avenue  
New York, New York

Attention: Daniel Zimmerman, Esq.

Respectfully yours,

COLE & DEITZ

By



✓ Motion for reargument  
denied & ordered  
July 8, 1974  
Jack B. Weinstein



ORDER AND JUDGMENT, JULY 7, 1974

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
-----X

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

Plaintiff,

74 Civ. 175  
(Weinstein, J.)

-against-

NATIONAL BANK OF NORTH AMERICA,

ORDER AND  
JUDGMENT

Defendant.

-----X

This cause came on to be heard on defendant's motion for summary judgment pursuant to Rules 12(b)(6) and 56, Federal Rules of Civil Procedure and on plaintiff's cross-motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, and the Court having considered the pleadings in the action, the stipulation of the parties dated November 12, 1973, the affidavit of Anthony J. D'Auria, sworn to the 19th day of March, 1974 and the exhibits annexed thereto in support of defendant's motion, and the affidavit of Daniel A. Zimmerman, sworn to the 16th day of April, 1974 and the exhibits annexed thereto in support of plaintiff's motion, and in opposition to defendant's motion, and plaintiff's and defendant's statements pursuant to Rule 9(g) of the General Rules of this Court, and the Court having heard the argument of counsel, and due deliberation having been had and the decision of the Court having been filed, it is

ORDERED, that plaintiff's cross-motion for summary judgment be and the same hereby is denied, and it is further

ORDERED AND ADJUDGED, that the defendant's motion for summary judgment be and the same hereby is granted, that the action be and the same hereby is dismissed on the merits and that defendant recover its costs, and it is further

ORDERED AND ADJUDGED, that plaintiff forthwith turn over and deliver to defendant the sum of \$160,473.44, together with accrued interest thereon, represented by a certificate deposit in the name of plaintiff and issued by defendant.

*Brooklyn*  
Dated: ~~New York~~, New York  
July *8*, 1974

ENTER  
*[Signature]*  
U. S. D. J.

NOTICE OF APPEAL  
(Filed August 7, 1974)

JA158

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
George Feldman, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

74 Civil 175

Plaintiff,

-v.-

National Bank of North America,

Defendant.

-----X  
Notice of Appeal

Notice is hereby given that George Feldman, the above-named plaintiff, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the Honorable Jack B. Weinstein, District Judge, granting defendant judgment entered on the 10th day of July, 1974.

New York, New York  
August 6, 1974

Hahn, Hessen, Margolis & Ryan  
Attorneys for Plaintiff

By: \_\_\_\_\_  
For the Firm

350 Fifth Avenue  
New York, New York 10001  
Tel. (212) 736-1000

## US COURT OF APPEALS: SECOND CIRCUIT

Index No.

FELDMAN,  
Plaintiff-Appellant,

against

NAT'L BANK OF NOR. AMER.,  
Defendant-Appellee.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele, being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at  
250 West 146th Street, New York, New York  
That on the 23<sup>rd</sup> day of October 1974 at 40 Wall St., New York  
deponent served the annexed *Appendix* upon

Cole &amp; Deitz

the in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 23<sup>rd</sup>  
day of October 1974

*James Steele*  
Print name beneath signature

JAMES STEELE

*Robert T. Brin*  
ROBERT T. BRIN

NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 011953  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975



